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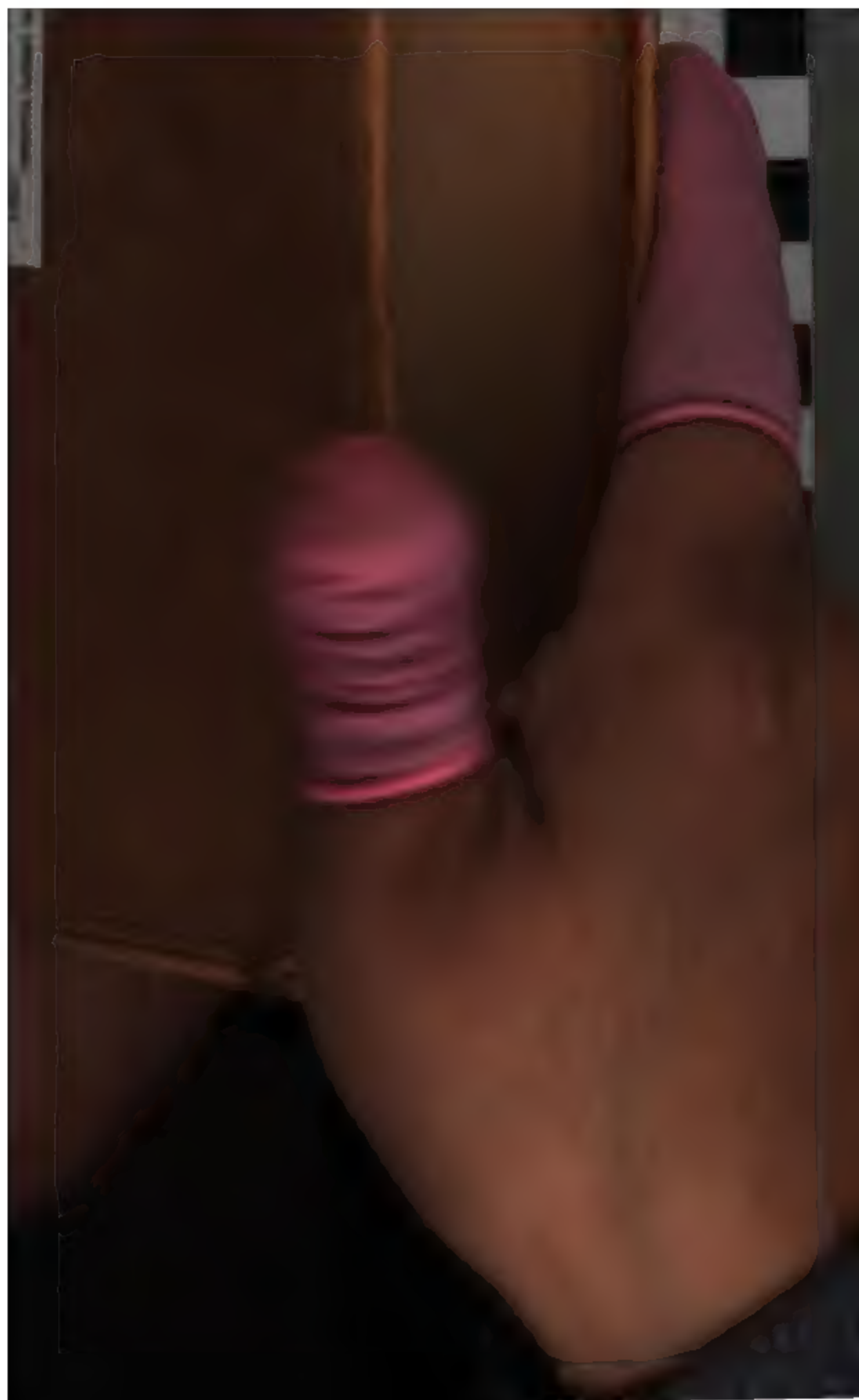
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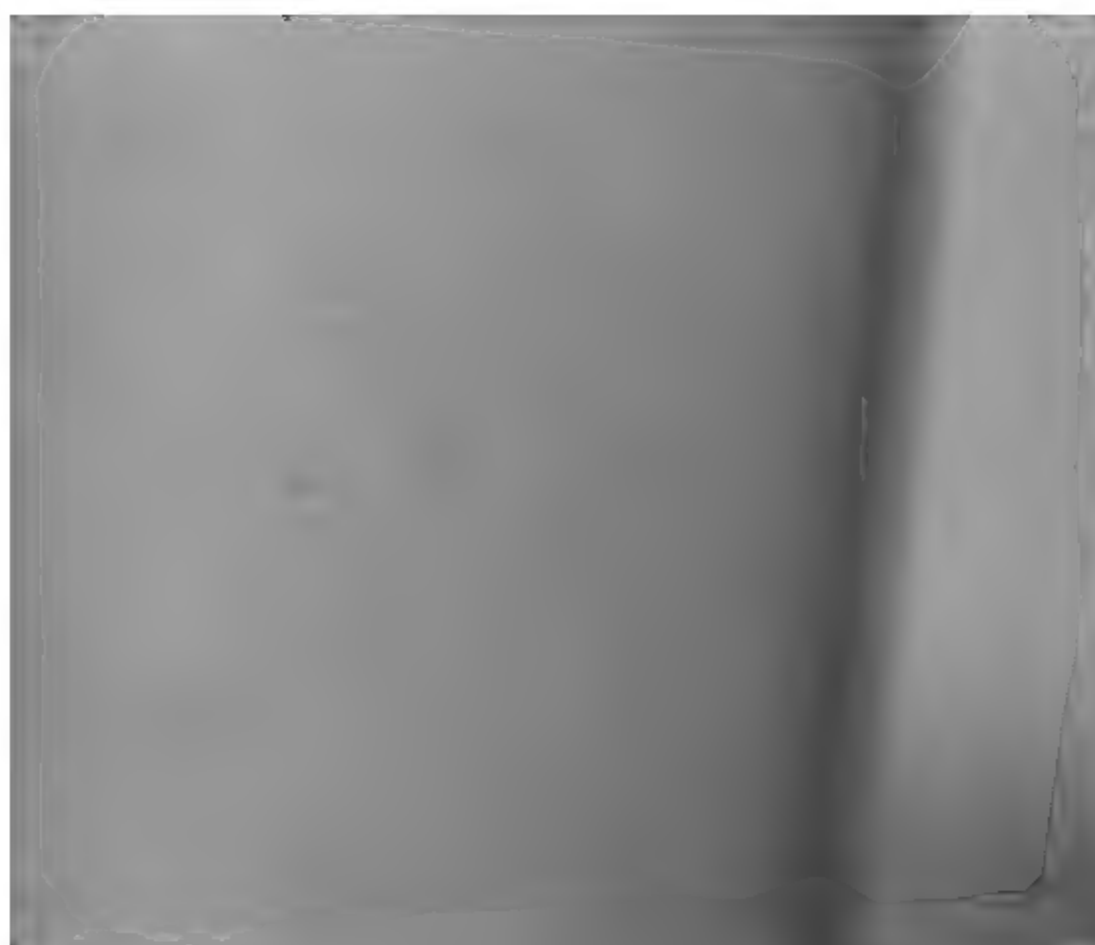
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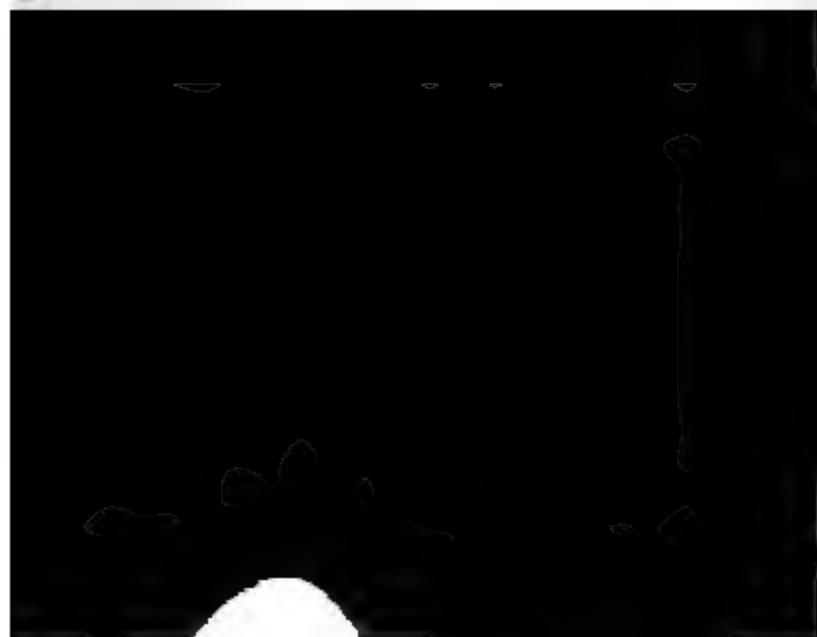


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THE
P E N A L C O D E
OF
CALIFORNIA.

ENACTED IN 1872; AS AMENDED IN 1889.

ANNOTATED BY
ROBERT DESTY.

Author of "A Compendium of American Criminal Law,"
"Federal Procedure," etc.

SAN FRANCISCO:
BANCROFT-WHITNEY CO.,
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PREFACE.

THIS edition of the Penal Code contains all the amendments made thereto up to the termination of the regular session of the Legislature of 1881. The date of approval of each amendment is given at the end of the section amended, the word "approved" indicating that the amendatory act took effect at the statutory time, sixty days after passage, while the words "in effect" indicate that the act took effect "from and after its passage."

All the decisions of the Supreme Court of this State, as well as numerous decisions of foreign courts of last resort, bearing upon the subjects treated, have been added as notes to the text, given in as terse a form as possible, having regard to the point decided and its application. Numerous cross-references will be found throughout the volume, to facilitate the comparison of cognate sections, and render the necessity of an appeal to the index less frequent.

The general statutes relating to subjects embraced in the Penal Code are given in the appendix, and those parts of the Code of Procedure relating to juries and evidence, as prepared by Mr. Newmark, are bound in for convenience of reference. The whole is submitted to the profession, with a view to aid practitioners in this interesting branch of the law.

ROBERT DESTY.

MAY 2nd, 1881.



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CONSTITUTIONAL PROVISIONS.

Art. I, § 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Inalienable rights.—Legislative power cannot reach them except on conviction of crime—8 Nev. 37; and no person can be deprived of his liberty without intervention of a jury—1 Stockt. Ch. 181; but every person may be restricted from exercising his rights in a manner so as to interfere with the rights of others—38 Cal. 704.

Art. I, § 4. * * * No person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief.

Testimony may be received without respect to religious belief of witness—17 Cal. 612. The rule applied to dying declarations of deceased—51 Cal. 599; 43 id. 34.

Art. I, § 5. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

See Const. U. S. art. I, § 9, subd. 2.

Art. I, § 6. All persons shall be bailable by sufficient sureties, unless for capital offenses where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

Bail—right to.—A prisoner may be admitted to bail after indictment found—19 Ala. 531. charge and indictment distinguished—44 Cal. 557; "proof" and "presumption" apply to the guilt, not to the grade of the offense—2 Pittsb. Rep. 362. The right is secured to those only who

have not been convicted—41 Cal. 39, *Ex parte Watkins*, 7 Peters, 595; as where jury fail to agree, and are discharged—41 Cal. 226; 30 Ala. 336, nor does it apply to capital cases in which bail may be made a matter of discretion, or may be forbidden—10 Cal. 269, 10 Ala. 261; 20 Id. 29, 34 Id. 279, 3 Ark. 777, as where the evidence would not sustain a verdict of murder in the first degree—31 Ala. 370, 3 Aikin. 221; 10 Ohio, 128.

Bail after conviction.—Pending appeal, admission to bail is in discretion of court—40 Cal. 2, 141 Ala. 41 Id. 30, a discretion measured by legal rules, and by reference to analogies of the law—43 Cal. 5, 69 Id. 69. Statutes making bail a matter of discretion, are constitutional—41 Cal. 71. The discretion will be exercised whenever substantial justice may be promoted—44 Cal. 166.

Who may release on bail.—To procure release on bail, the prisoner must go before the magistrate who issued the warrant, or some magistrate in the same county—44 Cal. 107, and after conviction, the judge of the court in which the trial was had—46 Cal. 262, 69 Id. 690, and then only under extraordinary circumstances—49 Cal. 66, 64 Id. 16. On an application by *habeas corpus*, the defendant must state facts to sustain the exercise of an intelligent discretion—41 Cal. 28. A release on bail is not imprisonment—41 Cal. 216.

Excessive bail, reduction of.—In fixing amount, the purpose should be to ensure the appearance of accused—44 Cal. 73, and on the application for reduction, the guilt of accused will be presumed—44 Cal. 73 44 Id. 266. The court or judge is not authorized to interfere, unless the bail is excessive and greatly disproportionate to the offense—44 Cal. 266, 44 Cal. 73. Fifteen thousand dollars not excessive for assault to murder—44 Cal. 266, nor one hundred and twelve thousand dollars for ten distinct felonies—43 Cal. 410.

Art. 2, § 7. The right of trial by jury shall be secured to all, and remain inviolate. * * * A trial by jury may

Prosecution by indictment of any crime, including misdemeanors, is not prohibited—53 Cal. 412.

Exceptions to grand jury.—The law may provide that exceptions be taken at a particular time—15 Cal. 426, and if he declines to do so, he waives his right to do so after indictment—49 Cal. 650. It is competent for the Legislature to restrict the grounds of challenge—45 Cal. 146. As, to want of competency—46 Cal. 146; 54 Ill. 37. Wallace C. J. dis., failure to insert names of witnesses, for are to be preserved—48 Cal. 147, or for irregularity in selecting, summoning or impaneling—46 Ill. 146, but that it was summoned by the coroner is not a ground for challenge to the panel—46 Ill. 154, 32 Ill. 68. See Code, § 983. That it was summoned as a petit jury and impaneled as a grand jury is illegal—45 Cal. 20. If accused is indicted under a wrong name, he may still be tried under his real name—6 Cal. 210.

Art. I, § 9. * * * Indictments found, or information laid, for publications in newspapers, shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

Art. I, § 13. In criminal prosecution in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses, in criminal cases, other than cases of homicide, where there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

Right of accused. Defendant has the right to confront and cross-examine witnesses—54 Cal. 527, but this right may be waived—53 Ala. 354.

Right to counsel.—In capital cases the court may allow more than two counsel to address the jury, on each side—48 Cal. 238. Order of argument—see 43 Cal. 154, Ill. 341, 44 Ill. 100; 43 Ill. 114, Ill. 302, 47 Ill. 105. By jail-breaking and escaping, defendant waives his right to counsel—65 Cal. 238, 97 Mass. 343.

Jeopardy.—A person indicted for murder, after discharge of jury, on indictment for manslaughter, is twice in jeopardy—48 Cal. 234. If, while jury is out deliberating, the judge adjourns the term, it is an ac-

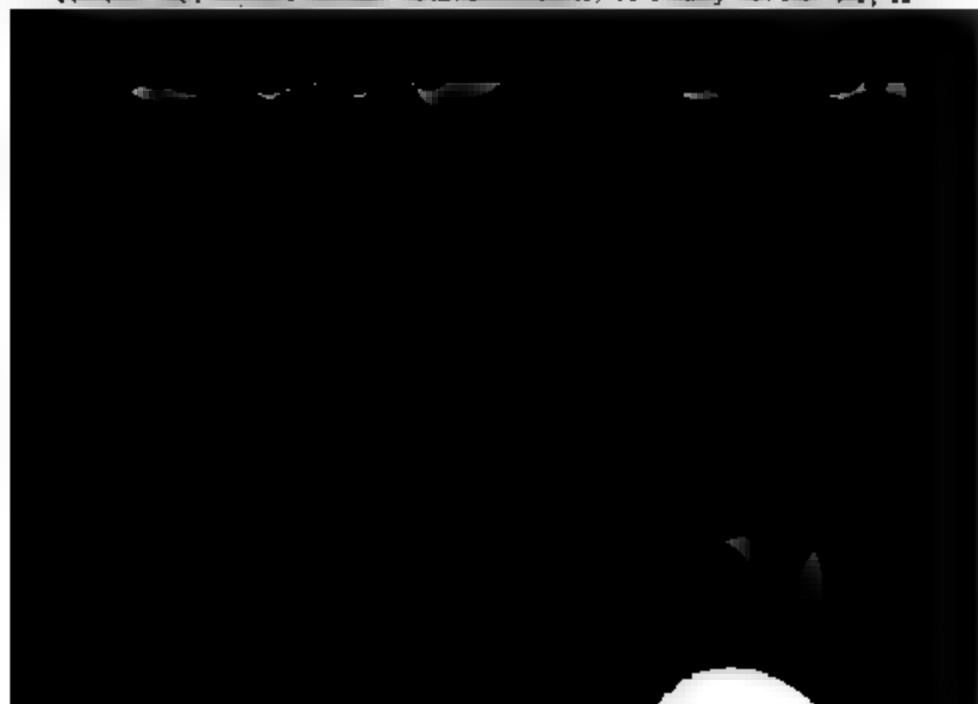
quittal—48 Cal. 329. It attaches when a party is once placed on trial before a competent court, on a valid indictment and a discharge of jury without legal consent—48 Cal. 328, 44 id. 35; 38 id. 479; 4 id. 376; 5 id. 214; 8 Blatnif. 526, 16 Conn. 54, 15 Ark. 261; 3 Brev. 421; 3 Cosh. 512; 7 Ga. 422, 3 Hawks, 331, 2 Hast. 172; 17 Mass. 515, 9 Wend. 640; but it is otherwise where the jury is discharged from unavoidable necessity—9 Wheat. 579; 2 Sum. 19; Band. 95; 1 McLean, 434; 6 Serg. & R. 577, as from their inability to agree—48 Cal. 326; 41 id. 212; or where the action has been dismissed—34 Cal. 42; 52 id. 463. The point of objection should be expressed on the record—48 Cal. 327; unless the verdict is so uncertain that judgment cannot be passed—33 id. 690.

Defendant as witness.—This provision applies only to criminal cases—1 Abb. U. S. 37; 1 Sawy. 605; 10 Int. Rev. Rec. 107. "Criminal case" means one involving punishment for crime—8 Ch. L. N. 67; 31 Int. Rev. Rec. 251; or charge for official misconduct—1 Wood, 498. Defendant need not be a witness on his own behalf—36 Cal. 572; and his refusal to be so does not tend to establish his guilt—33 id. 68; 36 id. 52. But a question put to him on cross-examination, whether he had been previously arrested, is not objectionable—45 Cal. 148. That he offers himself as a witness on his own behalf does not change the rules of practice, nor make him a witness for the State—41 Cal. 431.

Art. I, § 16. No bill of attainder, *ex post facto* law, or law impairing the obligations of contracts, shall ever be passed.

Bill of attainder.—A bill of attainder is a legislative act which inflicts punishment without a judicial trial—4 Wall. 377.

Ex post facto.—These words relate exclusively to penal laws—3 Dall. 390, 8 Peters, 109, 17 How. 456, 4 Wall. 172, id. 390, but not to criminal procedure—48 Cal. 114; 3 Gratt. 632; 16 B. Mon. 15; 14 Tex. 408. A law allowing counsel for the State to open and close the argument is not *ex post facto*—45 Cal. 114, nor is a statute providing that a second



senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.

Trial of impeachment.—To be effectual, articles must be presented to and be received by a quorum of the entire Senate—12 Fla. 653; and a member of the House voting thereon is qualified to sit on the trial, if subsequently elected to the Senate—Addison's Trial, 21-2; Porter's Trial, 53. All the functions of the governor are suspended during his trial—3 Neb. 464.

Art. IV, § 18. The governor, lieutenant governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice and associate justices of the Supreme Court, and judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State: but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide.

Misdemeanor in office.—Trial of civil officers—45 Cal. 200. A presiding judge may be impeached for preventing an associate from delivering his opinion—Addison's Trial, 114; 4 Dall. 225, Porter's Trial, 61. A removal from office is part of the judgment—1 Leg. Gaz. 455, 45 Ala. 234.

Art. IV, § 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

Art. VI, § 1. The judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, Superior Courts, justices of the peace, and such inferior courts as the Legislature may establish in any incorporated city or town, or city and county.

Branches of judiciary.—Each branch has its functions, and each is beyond the control of the other—5 Cal. 43; id. 228; and the Legislature cannot confer on one court the functions of another—5 id. 230; but see 39 id. 548. The only case is where the court cannot afford the relief sought—3 Cal. 25; 14 L. 34; id. 329, § id. 697; but two or more courts may have concurrent jurisdiction over same parties and subject-matter—39 id. 548. The judgment of court which first acquires jurisdiction cannot be interfered with—21 Cal. 438.

Inferior courts.—The Municipal Criminal Court of San Francisco is a constitutional court—39 Cal. 517; 41 id. 129; 32 id. 238.

Justices of peace.—Their jurisdiction is exclusive as to misdemeanors, where no indictment is found—33 Cal. 412. They may punish for contempt—47 Cal. 131. They are inferior courts, in favor of whose jurisdiction nothing can be assumed—46 Cal. 217; 12 Cal. 283; 22 Cal. 461; 33 Cal. 318; 34 Cal. 321.

City Criminal Court of San Francisco.—Is a court of record—33 Cal. 222.

Police Court of San Francisco.—Intendments in favor of its judgments in certain cases—43 Cal. 437. It possesses the same powers and jurisdiction as is or may be conferred by law upon justices of the peace—47 Cal. 127. It is an inferior court, and everything should appear in its proceedings to give it jurisdiction and justify its judgment—5 Cranch, 174; 33 Cal. 218; criticizing—45 Cal. 488. Jurisdictional facts must be set forth on the records—34 Cal. 321.

Art. VI, § 4. The Supreme Court shall have appellate jurisdiction * * * in all criminal cases prosecuted by indictment or information, in a court of record, on questions of law alone. * * * Each of the justices shall have power to issue writs of *Habeas corpus* to any part of the State, upon petition by or on behalf of any person



issue writs of *habeas corpus*, on petition by, or on behalf of any person in actual custody, in their respective counties.

Original jurisdiction.—District Courts (Superior Courts) have jurisdiction of actions to prevent extortion—45 Cal. 200. They have jurisdiction to order a writ issued to answer a criminal charge—5, Cal. 316, and whether such order is erroneous or irregular, cannot be considered on *habeas corpus*—id., 25 id. 190, 52 id. 79. Superior Courts, as successors of District Courts, can enforce the judgment rendered by the latter courts—54 Cal. 184. See Const. Cal. art. xiii, § 3. They have jurisdiction on *habeas corpus*, and all process necessary to enforcement of their judgments after affirmation on appeal—54 Cal. 344, 43 id. 457. A judge in one district may hold court in another district—Cal. 380, 2 id. 107.

County Courts (Superior Courts) are courts of general criminal jurisdiction—27 Cal. 65. This section confers appellate jurisdiction on Superior Courts, when mode and means of appeal are provided—41 Cal. 179. The jurisdiction of County Courts extends to inquiries by intervention of grand juries—53 Cal. 472.

Adjournment. By the Act of March 1st, 1864, a district judge may adjourn a general term in one county over an intervening term in another county; and the Act of 1863, p. 333, was intended to prevent the loss of a term, if the judge did not appear on the day appointed—42 Cal. 20.

Art. VI, § 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

Instructions. Court may instruct jury that testimony tends to prove the matter—49 Cal. 500, may state evidence and declare law but not express opinion on weight of evidence—17 id. 169, 18 id. 376, 22 id. 213, 24 id. 605, 27 id. 504, 34 id. 663, 36 id. 235. It should not instruct on controverted facts—51 Cal. 588, or charge that the existence of a fact raises a presumption of existence of another fact—51 Cal. 603; 52 id. 315; 54 id. 63, 51 id. 589.

Art. XX, § 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

Disfranchisement is not a cruel personal punishment within the prohibition of the Constitution—3 Smith, Pa. 112. See 28 Ind. 393.

Art. XX, § 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.



AN ACT TO ESTABLISH A PENAL CODE.

[Approved February 14th, 1872.]

***The People of the State of California, represented in Senate
and Assembly, do enact as follows:***

TITLE OF THE ACT.

1. This Act shall be known as THE PENAL CODE OF CALIFORNIA, and is divided into Three Parts, as follows:

I—OF CRIMES AND PUNISHMENTS.

II—OF CRIMINAL PROCEDURE.

III—OF THE STATE PRISON AND COUNTY JAILS.

PRELIMINARY PROVISIONS.

- § 2. When this act takes effect.
- § 3. Not retroactive.
- § 4. Construction of the Penal Code.
- § 5. Provisions similar to existing laws, how construed.
- § 6. Effect of Code upon past offenses.
- § 7. Certain terms defined in the senses in which they are used in this Code.
- § 8. What intent to defraud is sufficient.
- § 9. Civil remedies preserved.
- § 10. Proceedings to impeach or remove officers and others preserved.
- § 11. Authority of courts-martial preserved. Courts of justice to punish for contempt.
- § 12. Of sections declaring crimes punishable. Duty of court.
- § 13. Punishments, how determined.
- § 14. Witness' testimony may be read against him on prosecution for perjury.
- § 15. "Crime" and "public offense" defined.
- § 16. Crimes, how divided.
- § 17. Felony and misdemeanor defined.
- § 18. Punishment of felony, when not otherwise prescribed.
- § 19. Punishment of misdemeanor, when not otherwise prescribed.
- § 20. In certain crimes there must be proof of act and intent.

4. The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice.

Common-law rule abrogated—45 Cal. 431; 49 Id. 70; 46 Id. 117.

Reasonable construction.—The reasonable sense designed by the Legislature must be ascertained—8 How. 41, 7 Peters, 164; 3 Wash. C. C. 209; 4 Denio 335; 1 Fred. 121; 2 Leigh, 741; 2 Md. 310; 33 Me. 369; 2 McCord, 483; 8 Mass. 107; 4 Pick. 233; 13 Wend. 147; 1 Serg. & R. 207; 2 Va. Cas. 228.

5. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

6. No act or omission commenced after twelve o'clock, noon, of the day on which this Code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county, or township regulation, passed or adopted under such statutes, and in force when this Code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted, and punished in the same manner as if this Code had not been passed.

Effect on past offenses.—Where, by subsequent statute, the punishment is increased, it is *ex post facto*, and inoperative—Const. U. S. art. 1, § 10, subd. 1; 46 Cal. 117; 3 Dall. 386; 6 Cranch, 87, 138, otherwise, where punishment is diminished—22 N. Y. 25; 21 Pick. 42; 3 Chanc. 38; 1 Blackf. 193; 7 Tex. 69. Increased punishment for a subsequent offense may be imposed—45 Cal. 430; 47 Id. 13; see Dwyer's Crim. Law, 44d. § 125, and this is not punishment for the first offense—People v. Stanley, 47 Cal. 114. If a statute is changed subsequent to commission of offense, the punishment is regulated by the prior law—7 Cal. 356, but statutes changing the forms of procedure are not *ex post facto* laws—46 Cal. 118. See EX POST FACTO, ante, Const. Provis.

7. Words used in this Code in the present tense include the future as well as the present, words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular, the word person includes a corporation as well

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as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

First. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

Second. The words "neglect," "negligence," "negligent," and "negligently," import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

Third. The word "competent" imports a person fully



undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

Seventh. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canal-boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

Eighth. The words "peace officer" signify any one of the officers mentioned in section eight hundred and seventeen of this Code.

Ninth. The word "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of this Code.

Tenth. The word "property" includes both real and personal property.

Eleventh. The words "real property" are coextensive with lands, tenements, and hereditaments.

Twelfth. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Thirteenth. The word "month" means a calendar month, unless otherwise expressed.

Fourteenth. The word "will" includes codicils.

Fifteenth. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

Sixteenth. Words and phrases must be construed according to the context and the approved usage of the language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

Seventeenth. Words giving a joint authority to three or more public officers or other persons, are construed as

giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

Eighteenth. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

Nineteenth. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories, and the words "United States" may include the District and Territories. [Approved March 30th, in effect July 1st, 1874.]

Sect. 1. Willfully means designedly, intentionally—37 Ala. 104; 8 Met. 268; yet it frequently signifies an evil intent without justifiable excuse—10 Ala. 928; 3 Eng. 451; 6 Whart. 437; 13 Ad. & E. 433.

Sect. 2. Acts of omission, as well as acts of commission, may be negligent—2 Blatchf. 628; 5 McLean, 242.

Criminal negligence is an unlawful act done carelessly or a lawful act done without due caution—7 Ga. 13; 4 Mason, 508; 11 Humph. 100; 4 B. Mon. 170; Anth. 208; or an omission of a legal duty—3 Blatchf. 628; 5 McLean, 242.

Sect. 4. Malice is a will against a person—34 Cal. 49, 30 11 255. In



imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

10. The omission to specify or affirm in this Code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

11. This Code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

12. The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

13. Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code.

14. The various sections of this Code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

15. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding

to, and to which is annexed, upon conviction, either of the following punishments:

First. Death.

Second. Imprisonment.

Third. Fine.

Fourth. Removal from office; or,

Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.

Crime defined—§ 16. It includes every offense made punishable by law—*4 How. 98. See Dwy's Crim. Law, § 1 A. Punishments—see id. chap. viii. §§ 41-43.*

16. Crimes are divided into:

First. Felonies; and,

Second. Misdemeanors.

Division of crimes into felonies and misdemeanors—see Dwy's Crim. Law, § 2 A.

17. A felony is a crime which is punishable with death, or by imprisonment in the State prison. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the State prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other

jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both

Punishment for misdemeanor — 1 Gall. 488; 1 Hayw. 176. See Desty's Crim. Law, § 51 a.

20. In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.

There must be a joint operation of act and intent—29 Cal. 679; 34 Id. 183; 53 Ala. 393; 58 Id. 390; 9 Ark. 42; 2 D. Mon. 4.; 1 Dev. & H. 12.; 39 Ga. 507; 76 Ill. 218; 8 Ind. 290; 20 Johns. 427; 2 Mass. 118; 50 Pa. St. 10; 10 Vt. 351. See Desty's Crim. Law, § 5 a. See *post*, notes under § 22.

21. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

Intent inferred from acts—76 Ill. 218; 1 Colo. 436; 68 Ala. 423; 50 Vt. 216. See Desty's Crim. Law, § 6 a.

Presumption from acts.—The law presumes that the natural, necessary, and even probable consequences were intended by the doer of the act, if of sound mind. See Desty's Crim. Law, § 6 a.

Responsibility for crime—see Desty's Crim. Law, § 23 a. Test of—id. § 23 a. Idiocy, in what consists—id. § 24 a. Insanity—id. § 25.

Burden of proof.—The burden of proof of insanity is on him who pleads it—People v. Bell, 49 Cal. 488. See Desty's Crim. Law, § 29 a.

22. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But, whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

Voluntary intoxication is no excuse for crime—21 Cal. 545; 27 Id. 514; 43 Id. 352. See Desty's Crim. Law, § 36 a.

May be considered by jury, as to degree of the crime, and in mitigation of the offense—see Desty's Crim. Law, § 37 a.

Available, in rebuttal of malice—see Desty's Crim. Law, § 37 b; or to disprove criminal intent—id. § 37 c.

Involuntary intoxication, may excuse—see Desty's Crim. Law, § 38 a. So of insanity produced by intoxication—id. § 38 b.

Burden of proof is on him who pleads it.—49 Cal. 488. See Desty's Crim. Law, § 29 a.

23. Nothing in this Code affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the Codes, except so far as they have been repealed or affected by subsequent laws:

First. All acts incorporating or chartering municipal corporations, and acts amending or supplementing such acts.

Second. All acts consolidating cities and counties, and acts amending or supplementing such acts.

Third. All acts for funding the State debt, or any part thereof, and for issuing State bonds, and acts amending or supplementing such acts.

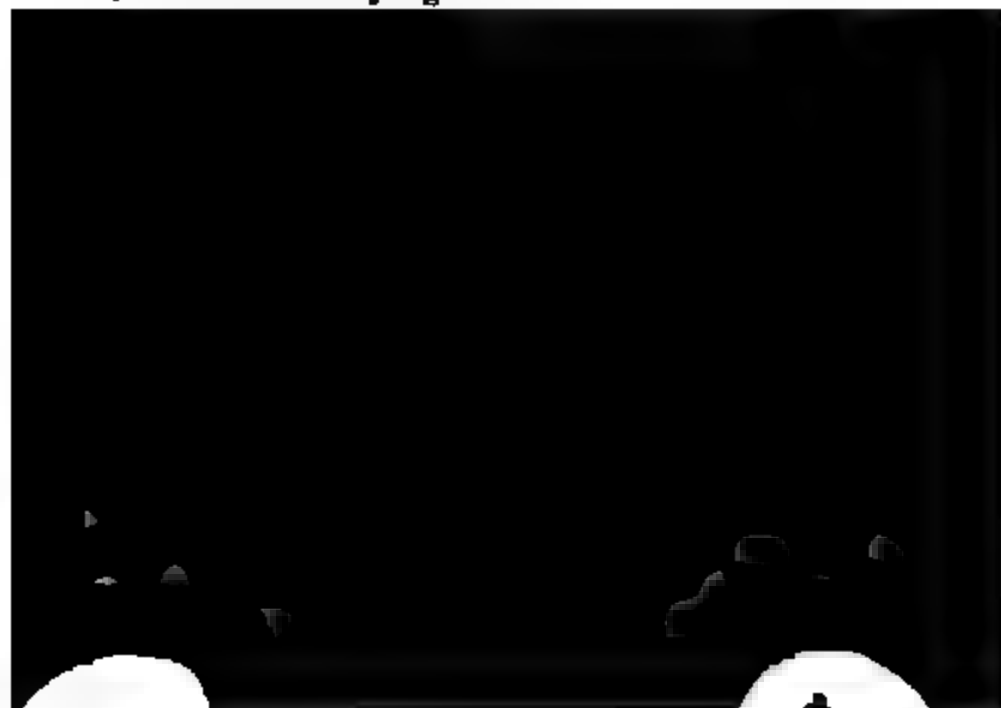
Fourth. All acts regulating and in relation to rhodeos.

Fifth. All acts in relation to judges of the plains.

Sixth. All acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the State.

Seventh. All acts in relation to a branch State prison.

Eighth. An act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight.



Fourteenth. An act to prevent the destruction of fish in Napa River and Sonoma Creek, approved January twenty-ninth, eighteen hundred and sixty-eight.

Fifteenth. An act to prevent the destruction of fish and game in, upon, and around, the waters of Lake Merritt or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy.

Sixteenth. An act to regulate salmon fisheries in Eel River, in Humboldt County, approved April eighteenth, eighteen hundred and fifty-nine.

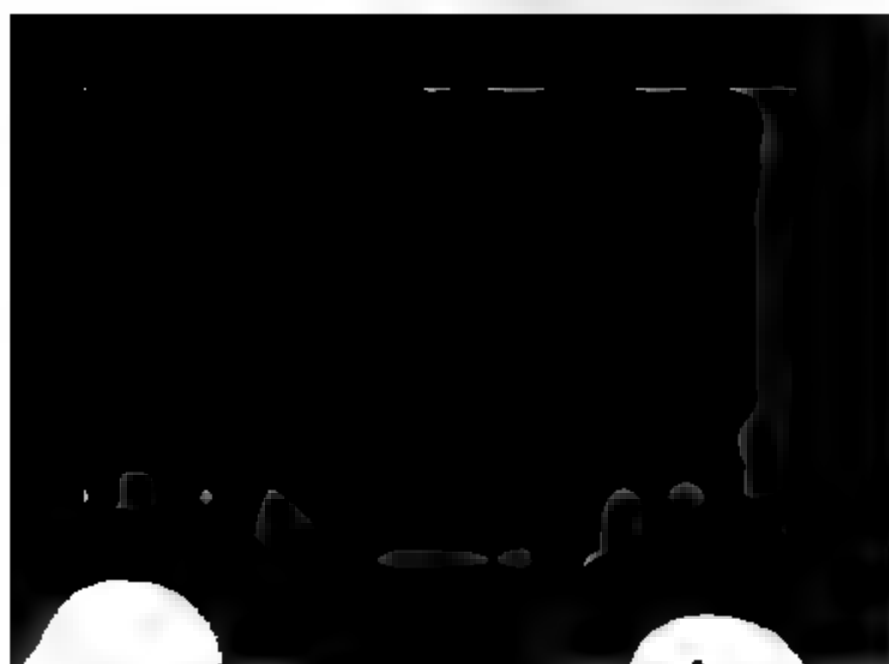
Seventeenth. An act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey, and Mariposa, approved March twentieth, eighteen hundred and sixty-six.

Eighteenth. An act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one.

Nineteenth. An act concerning oyster-beds, approved April second, eighteen hundred and sixty-six.

Twentieth. An act concerning gas companies, approved April fourth, eighteen hundred and seventy.

24. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as **THE PENAL CODE**, adding, when necessary, the number of the section.

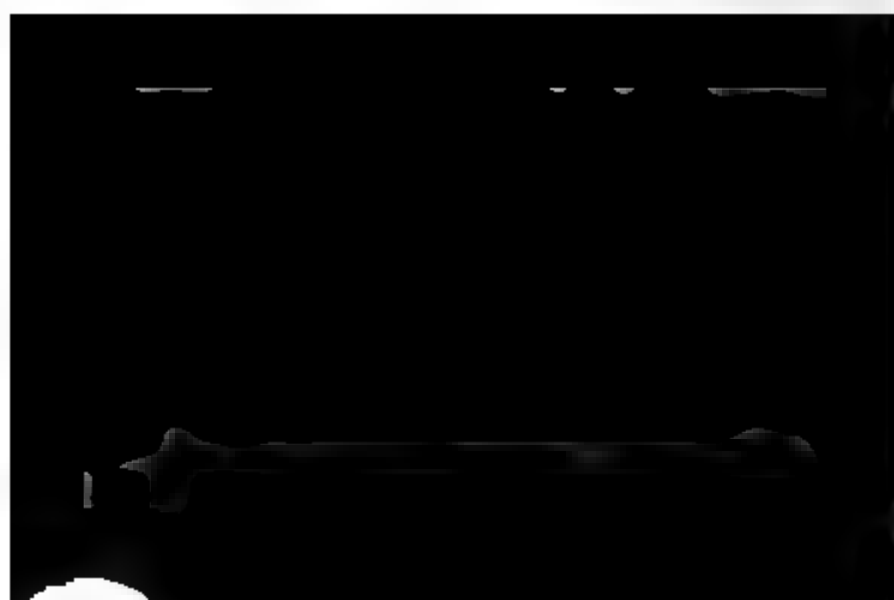


PART I.

OF CRIMES AND PUNISHMENTS.

(§§ 26-000.)

[35]



TITLE I.

Of Persons Liable to Punishment for Crime.

§ 26. Who are capable of committing crimes.

§ 27. Who are liable to punishment.

26. All persons are capable of committing crimes except those belonging to the following classes:

1. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness;

2. Idiots;

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent;

5. Persons who committed the act charged without being conscious thereof;

6. Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

7. Married women (except for felonies) acting under the threats, command, or coercion of their husbands;

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused [Approved March 30th, in effect July 1st, 1874]

Subd 1. Conclusive presumption of incapacity for crime of infants under seven years—3 H. R. 49, 13 Bush, 230, 14 Com. H. N. S. 435, Plow 1. See Desty's Crim. Law, § 21

Rebuttable presumption of incapacity of children between seven and fourteen—31 Ala. 323, 10 Allen, 398; 5 Halst. 163; 9 Humph. 175; 7 Jones, (N. C.) 61; 2 Tenn. 79; 41 Vt. 535; 13 Ired. 184; 13 Bush, 230; 1

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Lead. C. C. 71; 4 *Car. & P.* 236; 1 *Car. C. C.* 222. *Desty's Crim. Law*, § 21 a.

Subd. 2. Idiocy, in what consists—24 *Ind.* 231; 14 *Mass.* 297; 3 *Jones*, (N. C.) 126; 2 *Va. Cas.* 121; 17 *Ala.* 424; 6 *McLean*, 121; 6 *Parker Cr. R.* 43; *Desty's Crim. Law*, § 34 a.

Subd. 3. Lunatics and insane persons—5 *Cal.* 545; 26 *Id.* 229; 20 *Id.* 456; 7 *Met.* 509; 1 *Lead. C. C.* 94; 21 *Cal.* 425. See *Desty's Crim. Law*, § 25, et seq.

Subd. 4. Ignorance, or mistake of fact, may relieve from responsibility for crime—2 *McLean*, 14; 2 *Cush.* 577; 3 *W. Va.* 509; unless caused by carelessness or negligence—1 *Conn.* 593; 2 *Cush.* 577; 7 *Humph.* 149; 24 *Ind.* 77; 14 *Id.* 29; 2 *McLean*, 14; 7 *Met.* 369. See *Desty's Crim. Law*, § 35 a.

Subd. 5. Accident or misfortune, as an excuse for crime—20 *Mass.* 641; 20 *Id.* 397; 22 *Ga.* 479. See *Desty's Crim. Law*, § 39 a, b.

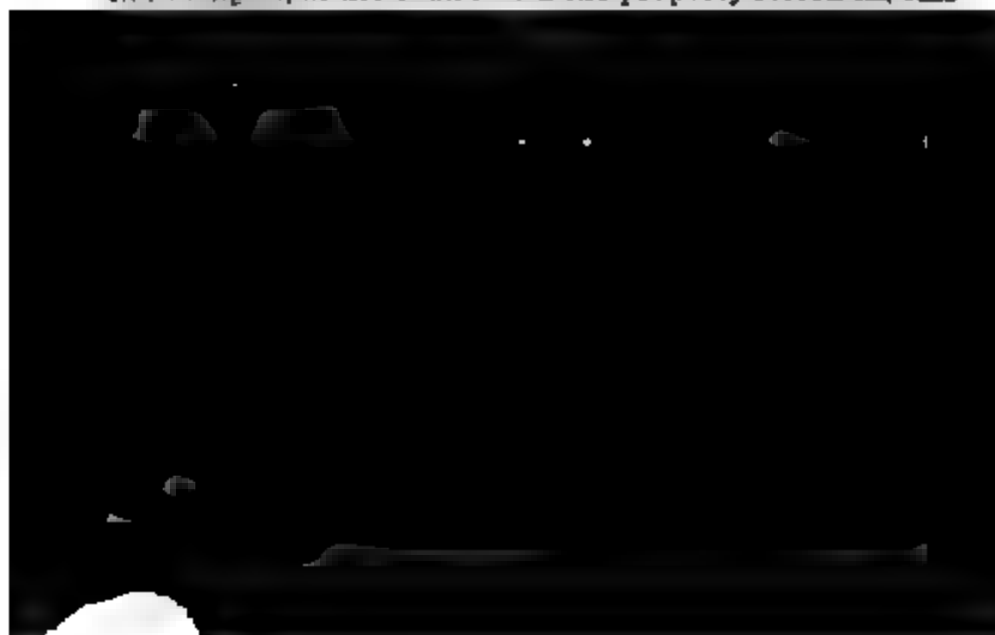
Subd. 7. Married women under coercion, not responsible for crime—1 *Gray*, 437; 97 *Mass.* 563; 163 *Id.* 71; 1 *Leach*, 349; 1 *Car. & P.* 116; *Dears. & B.* 563; 2 *Low. C. C.* 222. See *Desty's Crim. Law*, § 16 a.

Subd. 8. Direct physical compulsion, exempts from punishment—2 *Dall.* 246; 4 *Wash. C. C.* 402; 5 *Car. & P.* 616; 7 *Wall.* 214; 3 *W. Va.* 222. But threats of future injury, or commands from any other than a husband, do not excuse—18 *St. Tr.* 391; 5 *Car. & P.* 123. See *Desty's Crim. Law*, § 23 b.

§ 27. The following persons are liable to punishment under the laws of this State:

1. All persons who commit, in whole or in part, any crime within this State;

2. All who commit larceny or robbery out of this State, and bring to, or are found with the property stolen in, this



TITLE II.

Of Parties to Crime.

- § 30. Classification of parties to crime.
- § 31. Who are principals.
- § 32. Who are accessories.
- § 33. Punishment of accessories.

30. The parties to crimes are classified as:

1. Principals; and,
2. Accessories.

31. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

Principals, who are.—A principal is the perpetrator of the offense, or one who is actually present, aiding and abetting. 1 Cal 133; 10 Id. 68, 27 Id. 340, 49 Id. 24, 1 Drev. 355, 15 Ga. 346; 29 Ind. 45, 17 Ired. 114; 12 Ohio St. 214, 9 Pick. 46. See Desty's Crim. Law, § 36 n. *As principals in the second degree.* 49 Cal 24, *or accessories before the fact.* Id., explaining 40 Id. 129, 1-1 141, 39 Id. 75, 32 Id. 154. See Desty's Crim. Law, § 40 n. *Instigation to crime,* Id. § 40 b, *or aiders and abettors at the fact.*—48 Cal 19, Id. 64, see Desty's Crim. Law, § 37 a; *or accomplices.* Id. § 38 a. *Confederates in a common design,* of which the offense is a part, are all principals. 47 Ind 563, 13 Mo 382, 29 Id. 391, 9 Pick 496, 12 Ohio St. 46. See Desty's Crim. Law, § 39 a. It is not necessary to prove that one of two conspirators struck the fatal blow. 49 Cal 170; nor is one guilty because the one he kills was already mortally wounded.—48 Id. 64. If one person urges, encourages, aids, or assists another to kill, the legal presumption is, that he intends to kill.—6 Pac. Coast L. J. 681. The offense of the accessory before the fact is committed in the county where the substantive accessorial acts are consummated.—27 Cal. 340, 13 Bush, 142, 114 Mass. 307; 51 How. P. 342; 1 Parker Cr. R. 246. See Desty's Crim. Law, § 40 c.

32. All persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessories.

Accessories after the fact, who are—28 Cal. 404; 42 Ga. 331; 1 Swan, 283, 29 Miss. 703. What sufficient to create liability—see Desty's Crim. Law, § 44 a. Legal construction of liability—see id. § 44 a.

Guilty of a substantive crime—40 Cal. 409; 28 Id. 404; 40 Id. 123. See Desty's Crim. Law, § 43 a.

33. Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the State prison not exceeding five years, or in a county jail not exceeding two years, or by fine not exceeding five thousand dollars.

TITLE III.

Of Offenses against the Sovereignty of the State.

§ 37. Treason, who only can commit.

§ 38. Misprision of treason.

37. Treason against this State consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the State. The punishment of treason shall be death.

Treason against a State is an offense at common law—2 Arch. Cr. Pr. 893, and is so recognized in the Constitution of the United States—see Const. U. S. art. iv, § 2 (3).

Citizens of a State owe allegiance to such State—2 Cranch, 82; 2 Kent, 42. Even though they be alien residents—2 Dall. 370, 5 Wheat. 76. See Desty's Crim. Law, § 68 a.

Levying war, what constitutes—2 Burr. Tr. 401; 2 Dall. 86; id. 346; 1 id. 35, 4 Cranch, 75; 2 Wall. Jr. 129; 11 Johns. 549. See Desty's Crim. Law, § 68 b.

Adhering to enemies—What it embraces—see Desty's Crim. Law, § 68 c.

Punishment for treason—see Desty's Crim. Law, § 68 a.

38. Misprision of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment in the State prison for a term not exceeding five years.

Misprision of treason, what constitutes—see Desty's Crim. Law, § 68 d.

TITLE IV.

Of Crimes against the Elective Franchise.

- § 41. Violation of election laws by certain officers a felony.
- § 42. Fraudulent registration a felony.
- § 43. Refusal to be sworn or to answer board of judges.
- § 44. Refusal to obey summons of board.
- § 45. Fraudulent voting.
- § 46. Attempting to vote without being qualified.
- § 47. Procuring illegal voting.
- § 48. Changing ballots or altering returns by election officers.
- § 49. Inspectors unfolding or marking tickets.
- § 50. Forging or altering returns.
- § 51. Adding to or subtracting from votes given.
- § 52. Persons aiding and abetting.
- § 53. Intimidating, corrupting, deceiving, or defrauding electors.
- § 54. Furnishing money for elections.
- § 55. Offers to procure offices for electors.
- § 56. Communicating such offer.
- § 57. Bribing members of legislative caucuses, etc.

42. Every person who willfully causes, procures, or allows himself to be registered in the great register of any county, knowing himself not to be entitled to such registration, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail or State prison not exceeding one year, or by both. In all cases where, on the trial of a person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the great register of any county, without being qualified for such registration, the court must order such registration to be canceled.

Fraudulent registration is a misdemeanor—4 Blatchf. 43. See Rev. Stat. U. S. § 5513

43. Every person who, after being required by the board of judges at any election, refuses to be sworn, or being sworn, refuses to answer any pertinent question propounded by such board, touching the right of another to vote, is guilty of a misdemeanor. [Approved March 30th, in effect July 1st, 1874.]

44. Every person summoned to appear and testify before any board of registration, who willfully disobeys such summons, is guilty of a misdemeanor.

45. Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those illegally polled at any election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to, or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or carries away or destroys, or attempts to

carry away or destroy, any poll-lists, or ballots, or ballot-box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights on voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

Right to vote, not dependent on citizenship—see Desty's Crim. Law, § 70 c.

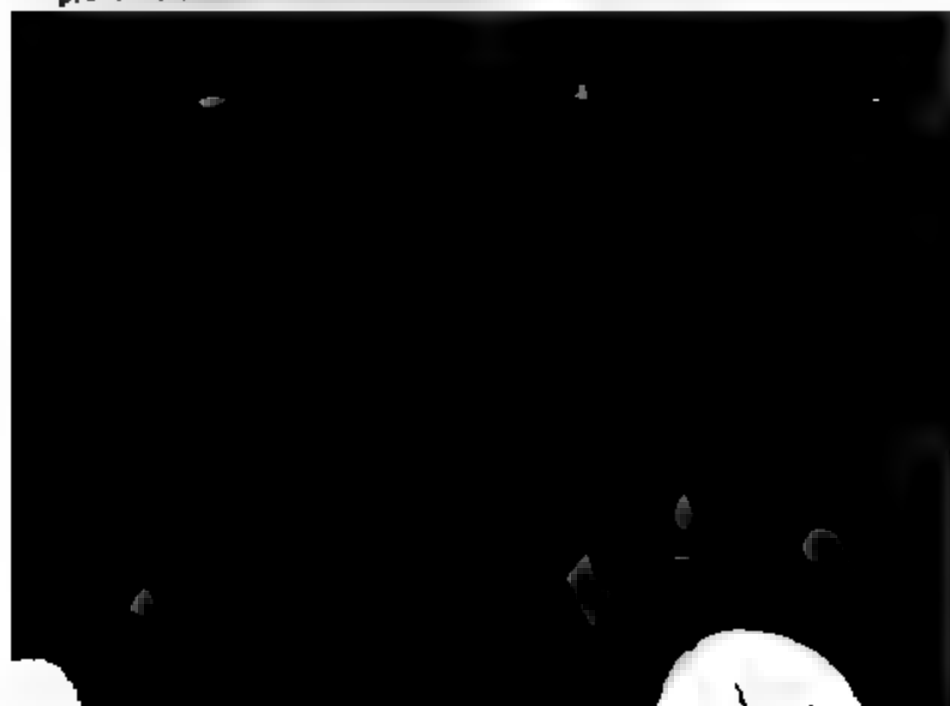
State has exclusive power to regulate the right of suffrage—43 Cal. 43; 1 Hughes, 443; 11 Blatchf. 200; 53 Pa. St. 112; 1 McAr. 169.

Illegal voting—see Desty's Crim. Law, § 70 c.

Young twice—see *id.* § 70 f. When a person is so drunk as not to be able to form an intent, he cannot be convicted—29 Cal. 678. The act must be done knowingly—*id.*

46. Every person not entitled to vote, who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

Attempts to defraud.—As by personating another who has lived, but is at the time dead—14 Low Can. Rep. 435; Russ. & R. 324; Rex v. Craup, 11 327; and it is not necessary that the false personation should prove an offence—12 W. & A. 100.



it, or carries away or destroys, or knowingly allows another to carry away or destroy any poll-list, ballot-box, or ballots lawfully polled, is punishable by imprisonment in the State prison for not less than two nor more than seven years.

49. Every inspector, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in to be opened or examined previous to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine, not less than fifty nor more than five hundred dollars.

50. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the State prison for a term not less than two nor more than ten years.


Certificate. - Making a false certificate of the result of an election is a misdemeanor—2 Dill. 219; S. C. 19 Ann. Law Reg. 737.

51. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the State prison for not less than one nor more than five years.

52. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sec-

tions, is punishable by imprisonment in the county jail for the period of six months, or in the State prison not exceeding two years. [Approved March 30th, in effect July 1st, 1874.]

53. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or who, being inspector, judge, or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to



or property for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers, previous to such election;

—is guilty of a misdemeanor.

Refreshments.—Giving refreshments to voter, to influence his vote—2 Tyrw 134; or furnishing liquors—17 Kan. 351.

Furnishing money, or property, to influence vote—see Desty's Crim. Law, § 70 h.

55. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, as an inducement or consideration to any person to vote for, or procure or aid in procuring the election of such candidate, is guilty of a misdemeanor.

Giving promises of reward to procure votes—see Desty's Crim. Law, § 70 h.

56. Every person, not being a candidate, who communicates any offer, made in violation of the last section, to any person, with intent to induce him to vote for, or to procure or aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor.

57. Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this State, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the State prison not less than one, nor more than fourteen years.

58. Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors

TITLE V.

Of Crimes by and against the Executive Power
of the State.

- § 65. Acting in a public capacity without having qualified.
- § 66. Acts of officers *de facto* not affected.
- § 67. Giving or offering bribes to executive officers.
- § 68. Asking or receiving bribes.
- § 69. Resisting officers.
- § 70. Extortion.
- § 71. Officers illegally interested in contracts.
- § 72. Presenting fraudulent bills or claims for allowance or payment.
- § 73. Buying appointments to office.
- § 74. Taking rewards for deputation.
- § 75. Exercising functions of office wrongfully.
- § 76. Refusal to surrender books, etc., to successor.
- § 77. Sections to apply to administrative and ministerial officers.

65 Every person who exercises any function of a public office without taking the oath of office, or without giving the required bond, is guilty of a misdemeanor. [Approved March 30th, in effect July 1st, 1874]

66. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

67 Every person who gives or offers any bribe to any executive officer of this State, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the State prison not less than one nor more than fourteen years, and is disqualified from holding any office in this State.

Executive officers. It is indictable to be concerned in bribing or attempting to bribe, a cabinet minister—4 Burr. 244; a commissioner of the revenue—2 Dall. 384, Whart. St. Tr. 139; a sheriff—14 Ala. 903; 4 Tex. Ct. App. 665, 1 Va. Cas. 138.

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The offer of a bribe is sufficient, without tender or production of the money—8 Pac. Coast L. J. 162; 23 N. J. L. 162. See Desty's Crim. Law, § 71 b.

68. Every executive officer, or person elected or appointed to an executive office, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the State prison not less than one nor more than fourteen years; and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this State.

Accepting bribes.—An offer by an officer, to receive a bribe, is indictable—85 DL 58. See Desty's Crim. Law, § 71 c.

69. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceed-



71. Every officer or person prohibited by the laws of this State from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws is punishable by a fine of not more than one thousand dollars, or by imprisonment in the State prison not more than five years, and is forever disqualified from holding any office in this State.

72. Every person who, with intent to defraud, presents for allowance or for payment to any State board or officer, or to any county, town, city, ward, or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of felony.

73. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor

Buying appointments to office—3 Serg. & R. 339; 36 Wis. 213, 8 Cent. L. J. 495; 3 Hill, 27; 32 Vt. 528, 2 Va. Cas. 460, 2 Camp. 229, 11 Mod. 387; 3 Burr. 1335; 4 Id. 2404. See Desty's Crim. Law, § 10 h.

74. Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding five thousand dollars, and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this State.

75. Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor

§§ 76-7 CRIMES AGAINST EXECUTIVE POWER.

§

76. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilates, destroys, or takes away the same, is punishable by imprisonment in the State prison not less than one nor more than ten years.

77. The various provisions of this chapter apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

TITLE VI.

Of Crimes against the Legislative Power.

- § 81. Preventing the meeting of the Legislature.
- § 82. Disturbing the Legislature while in session.
- § 83. Altering draft of bill or resolution.
- § 84. Altering enrolled copy of bill or resolution.
- § 85. Giving or offering bribes to members of the Legislature.
- § 86. Receiving bribes by members of the Legislature.
- § 87. Witnesses refusing to attend, etc., before the Legislature.
- § 88. Bribes by members of the Legislature.
- § 89. Lobbying.

81. Every person who willfully, and by force or fraud, prevents the Legislature of this State, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony.

82. Every person who willfully disturbs the Legislature of this State, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

Legislative bodies have inherent power to punish for contempt of their rules and orders—6 Wheat. 204, 7 Id. 33, 1 McAr. 453, 1 Wood. & M. 440, 9 Johns. 335, 6 Id. 337, 4 Pa. L. J. 220, 14 Gray, 236; 37 N. H. 450. See 1 Kent, 238; Cush. L. & P. of Legis. Assem. 533, 604, 635, 655; Dext's Crim. Law § 73 d. And any insult, contumely, threat, or violence or implication of bribery, or corruption, is an act of contempt—6 Wheat. 204 1 Wils. 299, 3 11 188. But the power of the Legislature cannot extend beyond the session—6 Wheat. 204, 13 Md. 642.

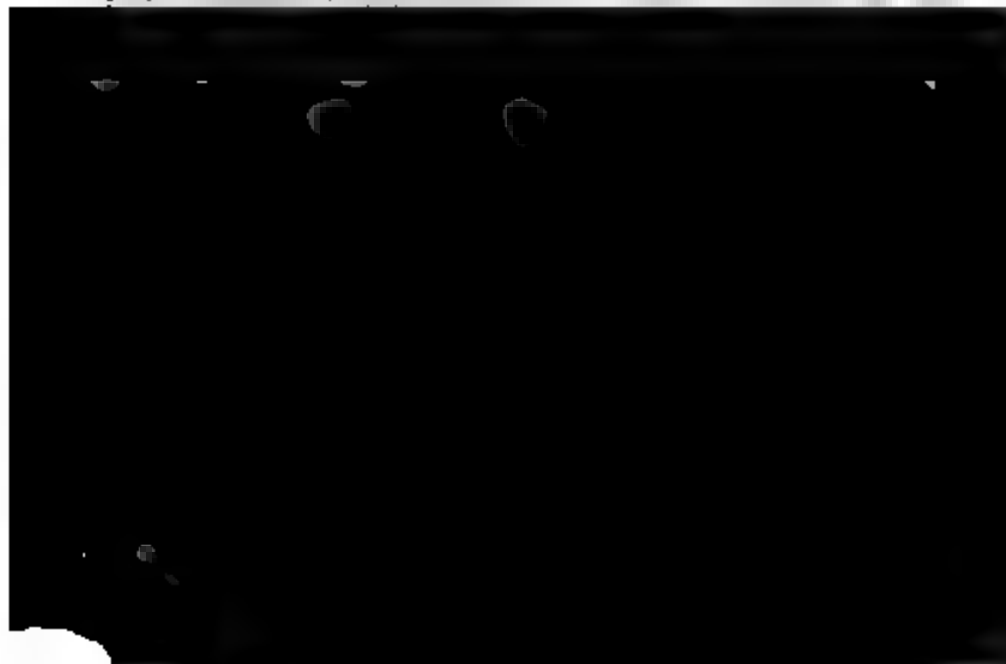
83. Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the Legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

84. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the Legislature of this State, with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the Legislature, is guilty of felony.

85. Every person who gives or offers to give a bribe to any member of the Legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the State prison not less than one nor more than ten years.

Giving bribe to legislative officers—Whart. Prec. 1012.

Offer of bribe.—It is as much a crime to offer a bribe as to take one—33 N. J. L. 102, 6 Pac. C. L. J. 1021. The offense is complete when the offer is made, although in a matter not in the power of the officer—33 N. J. L. 102. The attempt is sufficient even though the offense be not consummated—65 Ill. 58, 36 Tex. 294. See 14 A. 2d 604, 4 Burr. 2494, 2 Cr. 290, 2 L. J. Ray v. 177. And with respect to tender or production of a bribe—see 33 N. J. L. 102, 1 Pac. C. L. J. 1021. See



and forever disqualified from holding any office or public trust. [In effect April 6th, 1880.]

Receiving bribe.—An offer by an officer to receive a bribe is indictable—65 Ill. 88. See Besty's Criminal Law, § 110.

Contracts for contingent compensation for obtaining legislation, or for use of personal, or any secret or sinister influence on legislators, or for services of log-rolling, &c. &c. &c., and the parties thereto are indictable for misdemeanor—16 How. 34, 37 Cal. 164, 6 Dana, 366, 27 Mich. 293; 54 Me. 200, 35 Mass. 472, 1 Aiken, 264, 5 Watts & S. 315, 7 Watts, 152, 14 N. Y. 289, 18 Pick. 470, 8 Ala. 749, 2 Va. Cas. 460.


87. Every person who, being summoned to attend as witness before either house of the Legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons, and every person who, being present before either house of the Legislature or any committee thereof, willfully refuses to be sworn, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

88. Every member of the Legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this State.

89. Every person who obtains, or seeks to obtain money or other thing of value from another person, upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony. Upon the trial no person otherwise competent as a witness shall be excused from testifying as such concerning the offense charged, on the grounds that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterward be used against him in any judicial proceeding, except for perjury in giving such testimony. [In effect April 6th, 1880.]

TITLE VII.

Of Crimes against Public Justice.

- CHAP. I. BRIBERY AND CORRUPTION.
II. RESCUE.
III. ESCAPES AND AIDING THEREIN.
IV. FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.
V. PERJURY AND SUBORNATION OF PERJURY.
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CHAPTER I.

BRIBERY AND CORRUPTION.

- § 92. Giving bribes to judges, jurors, referees, etc.
- § 93. Receiving bribes by judicial officers, jurors, etc.
- § 94. Extortion.
- § 95. Improper attempts to influence jurors, referees, etc.
- § 96. Misconduct of jurors, referees, etc.
- § 97. Justice or constable purchasing judgment.
- § 98. Officers convicted of, disfranchised.
- § 99. Superintendent of printing, interest in contracts, etc.
- § 100. Superintendent of printing, collusion in furnishing materials.

92. Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the State prison not less than one nor more than ten years.

Bribery, what constitutes.—It is the giving or receiving of any valuable thing, in order that the receiver may be corruptly influenced thereby, in the discharge of some public duty—10 Iowa, 212. See *Desty's Crim. Law*, § 71 a. It must be in a business matter, or cause, pending or brought before him—2 Cal. 504, 14 Ala. 603.

Judicial officers.—The statute confines the offense to acting more favorably to one side than the other—2 Cal. 504.

Justices of the peace, or any judicial officer—14 Ala. 603; 20 Vt. 9.

Prosecuting attorneys—33 Ind. 189, 1 Va. Cas. 139; 14 Ala. 503; Conf.

Members of municipal board—33 N. J. L. 102.

Offering bribe.—The offer of a bribe is a crime—33 N. J. L. 102, even though the offense be not consummated—45 Ill. 58, 36 Tex. 294. See 14 Ala. 603, 4 B. M. 214, 2 Comp. 27, 2 Ind. 189, 1 Va. 139, nor, although in a matter not in the power of the officer to, or subordinate—33 N. J. L. 102; and a person subsequent to the offer will exculpate—7 Tex. Ct. App. 181. When a party knew that the one to whom he offered the bribe was under age, the offense is committed—2 Sawy. 481. A tender or production of the money is not necessary—6 Pac. C. L. J. 1031, 1 Va. Cas. 138. See *Desty's Crim. Law*, § 71 b.

93. Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the State prison not less than one nor more than ten years.

Accepting bribe.—It is bribery to seek an undue reward to influence behavior in office—4 Bl. Com. 139; and an offer to receive a bribe is indictable—65 Ill. 88. To make a case of bribery actual value—64 Ind. 561; S. C. 2 Am. Cr. R. 32.

94. Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Extortion.—No fees can be exacted but those provided by law, sanctioned by the court, or permitted by ancient usage; and where no remuneration is provided, the officer must perform the duties without it—3 Sawy. 473; 1 Serg. & R. 504; 1 Up. Can. Q. B. 282; 16 Id. 182. See *Desty's Crim. Law*, § 84 a, b. It is an indictable offense. See *Id.* 85 a.

95. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or

Embracery is an attempt to corruptly influence a jury or juror—2 Bish. C. L. 6th ed. § 284; 2 Whart. C. L. 8th ed. § 1838. It is not a crime at common law—2 Nov. 263. A witness has no right to deliver a paper to a jury, without directions of the court—5 Cowen, 501.

96. Every juror, or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either—

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,

2. Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings;

—is punishable by fine not exceeding five thousand dollars, or by imprisonment in the State prison not exceeding five years. [Approved March 30th, in effect July 1st, 1874.]

97. Every justice of the peace or constable of the same township who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of, such justice, is guilty of a misdemeanor.

98. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this State.

99. The superintendent of state printing shall not, during his continuance in office, have any interest, directly or indirectly, in any printing of any kind, or in any binding, engraving, or lithographing, or in a contract for furnishing paper or other printing-stock or material connected with the State printing; and any violation of these provisions shall subject him, on conviction before a court of competent jurisdiction, to imprisonment in the State prison for a term of not less than two years nor more than five years, and a fine of not less than one thousand

dollars nor more than three thousand dollars, or by both such fine and imprisonment. [In effect April 1st, 1878.]

100. If the said superintendent of state printing shall corruptly collude with any person or persons furnishing paper or materials, or bidding therefor, or with any other person or persons, or have any secret understanding with him or them, by himself or through others, to defraud the State, or by which the State shall be defrauded or made to sustain a loss, contrary to the true intent and meaning of this act, he shall, upon conviction thereof, in any court of competent jurisdiction, forfeit his office, and be subject to imprisonment in the State prison for a term of not less than two years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and imprisonment. [In effect April 3rd, 1876.]

CHAPTER II.

RESCUES.

§ 101. Rescuing prisoners.

§ 102. Retaking goods from custody of officer.

101. Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable with death: by imprisonment in the State prison not less than one nor more than fourteen years.

2. If such prisoner was in custody upon a conviction of any other felony: by imprisonment in the State prison not less than six months, nor more than five years.

3. If such prisoner was in custody upon a charge of felony: by a fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding two years.

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony: by fine not exceeding five hundred dollars, and imprisonment in the county jail not exceeding six months.

Rescue is the violent delivery of a prisoner from lawful custody—21 Wend. 503, see 1 Bl. Com. 141, even though the prisoner takes no part in the violence—1 Charl. 13, see 19 Mass. 27. It must not be from accident, or without threatened danger—see 1 Ross. Cr. 94 & 1 594. The imprisonment must be *prima facie* just—Ratib. 1 Dutch 267, See 7 Conn. 792. There must be knowledge by the rescuer that the prisoner was under arrest—26 Md. 109. If unsuccessful, it may be indicted as an attempt—15 Me. 100.

102. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

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CHAPTER III.

ESCAPES, AND AIDING THEREIN.

- § 105. Escapes from State prison.
- § 106. Attempt to escape from State prison.
- § 107. Escapes from other than State prison.
- § 108. Officers suffering convicts to escape.
- § 109. Assisting prisoner to escape.
- § 110. Carrying into prison things useful to aid in an escape.
- § 111. Expense of trial for escape.

105. Every prisoner confined in the State prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the State prison for a term equal in length to the term he was serving at the time of such escape; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison. [In effect April 16th, 1880.]

106. Every prisoner confined in the State prison for a term less than for life, who attempts to escape from such

exceeding ten years, and fine not exceeding ten thousand dollars.

Permitting escape, liability for—see Desty's Crim. Law, § 80 a.

109. Every person who willfully assists any prisoner confined in any prison, or in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or custody, is punishable as provided in section one hundred and eight of this Code.

Liability of party aiding escape—see Desty's Crim. Law, § 79 a.

110. Every person who carries or sends into a prison anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in section one hundred and eight of this Code.

Conveying articles into jail to aid an escape is a substantive offense—3 Tex. Ct. App. 553, 1 id. 63.

Assisting to break prison renders the party assisting an accessory—14 Mass. 29, 15 Me. 100, 9 Johns. 70, Russ & R. C. C. 458, 1 Car. & M. 250. Supplying instruments to enable him to break jail—see 4 Bl. Com. 347 as a crowbar—Law R. 1 C. C. 17, but a wife is not liable if the instrument was procured by his directions—1 Car. & P. 16, note. In a trial for aiding a prisoner to escape, another prisoner escaping by the same means is not a *particeps criminis*—3 Tex. Ct. App. 553.

111. Whenever a trial shall be had of any person under any of the provisions of sections one hundred and five and one hundred and six of this Code, and whenever a convict in the State prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, properly certified to by a superior judge of said county, which statement shall be sent to the board of State prison directors for their approval, and after such approval, said board shall cause the amount of such costs to be paid out of the money appropriated for the support of the State prison, to the county treasurer of the county where such trial was had. [In effect April 6th, 1880.]

CHAPTER IV.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

- § 113. Larceny, destruction, etc., of records by officers.**
- § 114. Larceny, destruction, etc., of records by others.**
- § 115. Offering false or forged instruments to be recorded.**
- § 116. Adding names, etc., to jury lists.**
- § 117. Falsifying jury lists, etc.**

113. Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is punishable by imprisonment in the State prison not less than one nor more than four-

115. Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this State, which instrument, if genuine, might be filed, or registered, or recorded under any law of this State, or of the United States, is guilty of felony.

Putting a forged deed on record 27 Mich. 387; 3 Abb. App. Dec. 441.

116. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury-box, or otherwise, or extracts any name therefrom, or destroys the jury-box, or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony. [Approved March 30th, in effect July 1st, 1874.]

117. Every officer or person required by law to certify to the list of persons selected as jurors, who maliciously, corruptly, or willfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury-box the same names that are on the certified list, and no more and no less than are on such lists, is guilty of a felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

- § 118. Perjury defined.
- § 119. Oath defined.
- § 120. Oath of office.
- § 121. Irregularity in administering.
- § 122. Incompetency of witness no defense.
- § 123. Knowledge of materiality of testimony not necessary.
- § 124. Making depositions, etc., when deemed complete.
- § 125. Statement of that which one does not know to be true.
- § 126. Punishment of perjury.
- § 127. Subornation of perjury.
- § 128. Procuring the execution of innocent persons.

118. Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath states or swears falsely, or who procures the execution of innocent persons, or the execution of any unlawful or oppressive order of a court or judge, shall be guilty of perjury, and shall be liable to the same punishment as is provided for perjury.

119. The term "oath," as used in the last section, includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.

Form of oath. The form of oath is merely directory—, 1 Allen, 243. It is immaterial except that it must be such as the witness believes is binding— 2 Mass. 274; 2 Hawks, 458; 2 Murph. 320, 3 Id. 153; 1 Rob. (Va.) 729, 2 Id. 593, 8 Wend. 636, 2 Brod. & B. 232. See Desty's Crim. Law, § 76 c.

120. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.

Official oath. Perjury does not include future facts or contingencies—3 Zab. 49.

121. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

Irregular mode. Perjury may be committed, although the person was improperly sworn— 1 Dev. 263; 10 Ohio, 220; 10 Johns. 167; 4 Seld. 67. So it may be administered on a common-prayer book— 2 Kerr, 176; or on Watts' Psalms and Hymns— 4 Seld. 67, and kissing the book may be omitted— 1 Craw. & B. 199.

122. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

Competency or incompetency of witness is immaterial— 10 Johns. 167, 10 Id. 220, 3 Yates. 414, or that the false testimony be inadmissible— 1 N. Y. 85, 9 Cox C. C. 105.

123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him, or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

124. The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

§§ 125-8 PERJURY AND SUBORNATION OF PERJURY. 63

125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

Want of knowledge.—A false statement of a fact which he did not know at the time to be true, is perjury—2 Bost. L. R. 177; 17 N. H. 373; 8 Pa. St. 170; 6 Blinn. 249; 21 N. Y. 226; or of which he has no knowledge, 3 Parker Cr. R. 511; Hetley, 97.

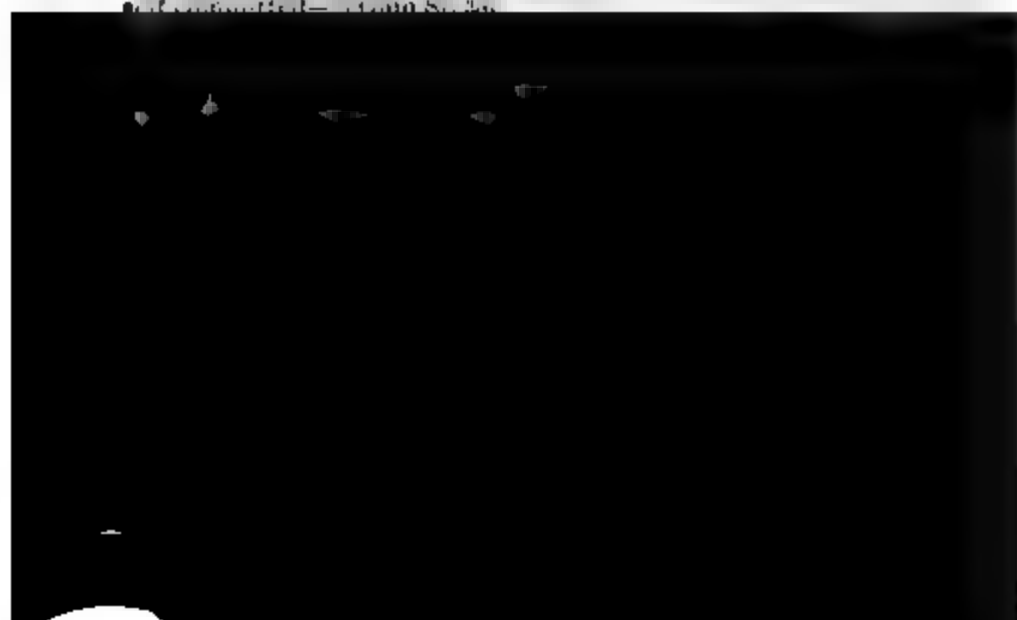
126. Perjury is punishable by imprisonment in the State prison not less than one, nor more than fourteen years.

127. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Subornation of perjury is the procuring, instigating, inciting, or persuading another to swear falsely—3 How. 41; 5 Met. 241; 2 Leach, 509; knowing that the witness would testify to the fact, knowing it to be false—4 Met. 241; 21 Ohio St. 477; S. C. 1 Green O. R. 257; but it must be in a pending proceeding—29 Me. 218; S. C. 2 Am. Cr. R. 620; 3 Barb. 644. See Dwyer's Crim. Law, § 78 j.

128. Every person who, by willful perjury, or subornation of perjury, procures the conviction and execution of any innocent person, is punishable by death.

Crimen falsi includes the offense of attempting to secure the conviction of another and innocent person for a crime which he has himself committed—1000 Statutes.



CHAPTER VI.

FALSIFYING EVIDENCE.

- § 132. Offering false evidence.
- § 133. Deceiving a witness.
- § 134. Preparing false evidence.
- § 135. Destroying evidence.
- § 136. Preventing or dissuading witness from attending.
- § 137. Bribing witnesses.
- § 138. Receiving or offering to receive bribes.

132. Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered or antedated, is guilty of felony.

Falsifying evidence—see 2 Har. (Del.) 283, 14 Md. 30.

133 Every person who practices any fraud or deceit or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness, or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

134 Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

Fabrication of evidence—2 Hal. 282, 30 Clark. & F. 154, 2 East, 362; 5 Term Rep. 619, 2 Show. 1. See 2 Whart. C. L. 8th ed. § 1334, 2 East P. C. 321.

135. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or

thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

136. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor.

Dissuading witness from attending—3 Har. (Del.) 562; 20 Vt. 9; 14 Gray, 87; 1 Strange, 612; 8 Mod. 336.

137. Every person who gives, or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony. [Approved March 30th, in effect July 1st, 1874.]

138. Every person who is a witness, or is about to be called as such, who receives or offers to receive, any bribe, upon any understanding that his testimony shall be



CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

- § 142. Officer refusing to arrest parties charged with crime.
- § 143. Public administrator, neglect or violation of duty by.
- § 144. Receiving fee for services in arresting fugitives.
- § 145. Delaying to take person arrested before a magistrate.
- § 146. Making arrests, etc., without lawful authority.
- § 147. Inhumanity to prisoners.
- § 148. Resisting public officers in the discharge of their duties.
- § 149. Assault, etc., by officers, under color of authority.
- § 150. Refusing to aid officers in arrest, etc.
- § 151. Taking extra-judicial oaths.
- § 152. Administering extra-judicial oaths.
- § 153. Compounding crimes.
- § 154. Debtor fraudulently concealing his property.
- § 155. Defendant fraudulently concealing his property.
- § 156. Fraudulent pretenses relative to birth of infant.
- § 157. Substituting one child for another.
- § 158. Common barratry defined. How punished.
- § 159. What proof is required.
- § 160. Misconduct by attorneys.
- § 161. Buying demands or suit by an attorney.
- § 162. Attorneys forbidden to defend prosecutions-carried on by
their partners or formerly by themselves.
- § 163. Limitation of preceding section.
- § 164. Grand juror acting after challenge has been allowed.
- § 165. Bribing boards of supervisors, etc.
- § 166. Criminal contempts.
- § 167. False certificates by public officers.
- § 168. Disclosing fact of indictment having been found.
- § 169. Disclosing what transpired before the grand jury.
- § 170. Maliciously procuring search warrant.
- § 171. Unauthorized communication with convict.
- § 172. Keeping liquor within two miles of State prison.
- § 173. Importing foreign convicts.
- § 174. Bringing Chinese into the State.
- § 175. Separate and distinct prosecution.
- § 176. Omission of duty by public officer.
- § 177. *Offense for which no penalty is prescribed.*
- § 178. *Officers of corporations not to employ Chinese.*
- § 179. *Corporations not to employ Chinese.*

142. Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Negligence of a public duty is an indictable offense, although no mischief accrued therefrom—2 Cold. 181; 1 Ray, 316; 1 Bush, 39; 4 id. 331; 1 Yeates, 419; Conf. Rep. 38.

143. Every person holding the office of public administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding two years, or both.

144. Every person who violates any of the provisions of section one thousand five hundred and fifty-eight is guilty of a misdemeanor.

145. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a mis-

discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Resisting officer.—To constitute the offense, the officer must be authorized to execute the process and the process must be legal—2 Ga. & D. 361, 6 Ga. ay. 351, 1 Demo. 54, 11 Met. 23, 5 Barn. & C. 33, 1 Car. & K. 46, 1 Leach 51, 1 P. & F. 255. The official acts of an officer *de facto* are valid so far as the rights of the public or of the persons are concerned—3 Ala. 640, 21 Ga. 217. There must be some overt act—39 Conn. 144, 8 C. & G. 296, but a blow is not necessary—36 Ala. 273, 41 Vt. 636. Remonstrance is not resistance—3 Brewst. 343, see 41 Ga. 507, nor is refusal to obey an officer an indictable resistance—43 Md. 440, 26 Ohio St. 196, 37 Wis. 195, 41 Tex. 379. Violence against the officer is necessary—3 Wash. C. C. 335. See Desty's Crim. Law, § 70 a.

149. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Assaults by officers.—Where a parish officer, against the will of a pauper, cut off her hair—4 Car. & P. 239; see 6 Jur. 243; or where an almshouse keeper applied unnecessarily severe chastisement—34 Conn. 132. See 77 N. C. 494.

150. Every male person above eighteen years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

151. Repealed. [Approved March 30th, in effect July 1st, 1874.]

152. Repealed. [Approved March 30th, in effect July 1st, 1874.]

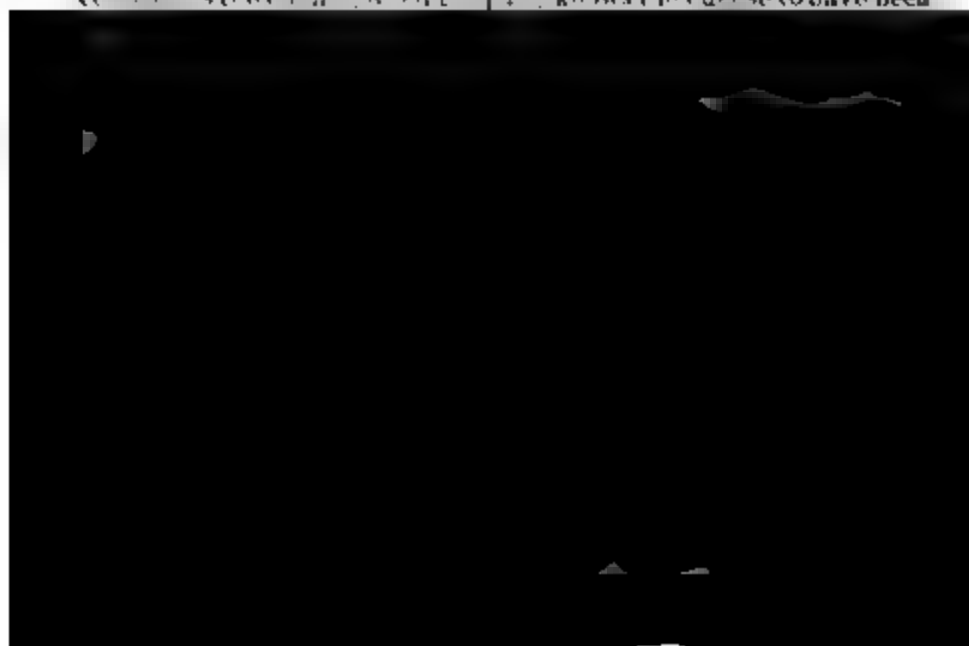
153. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the State prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the State prison for life.

2. By imprisonment in the State prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the State prison for any other term than for life.

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

Compounding offenses.—An agreement not to prosecute, or to put an end to a prosecution, in consideration of some peculiar advantage, is a crime, if the person who makes the agreement knows the offense to have been



defraud, hinder, or delay his creditors of their rights, claims, or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars or by both.

Fraudulent concealment of property with intent to defraud creditors—see 39 N. H. 196, 103 Mass. 540, 5 Serg. & Ft. 519. It is not necessary that the parties attempted to be defrauded should be judgment creditors—8 Wend. 546, 2 Johns. C. 144. An intent to defraud must be shown, and, in case of receivers, a guilty knowledge of such intent—15 Gray, 192, 112 Mass. 289.

155. Every person against whom an action is pending or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the State prison not exceeding ten years.

157. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the State prison not exceeding seven years.

158. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, and by fine not exceeding five hundred dollars.

Barratry is the practice of moving or exciting quarrels between other persons, whether at law or otherwise—11 Pick. 433; and see 15 Mass. 227; 12 Pick. 259; 52 Pa. St. 243; 1 Ball. 373. A justice of the peace, or a magistrate—1 Ball. 373—or an attorney advising or encouraging a groundless action, may be guilty of barratry—3 Mod. 97. See Best's Crim. Law, § 74 a.

159. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Malicious design.—There must be a malicious design as manifested by several instances of offending—15 Mass. 227; 1 Ball. 373; 11 Pick. 433; 1 Cush. 2. The design must be to harass and oppress—15 Mass. 227.

160. Every attorney who, whether as attorney or as counsellor, either—

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for;

—is guilty of a misdemeanor.

Serjeants and officers of courts, by gross fraud and corruption, de-



aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

163. The preceding section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

164. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at, or takes part, or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

165. Every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city, or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe, is punishable by imprisonment in the State prison for a term not less than one nor more than fourteen years, and is disqualified from holding any office in this State.

166. Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor.

1 Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly

tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character committed in the presence of any referee, while actually engaged in a trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

3. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

7 The publication of a false or grossly inaccurate report of the proceedings of any court.

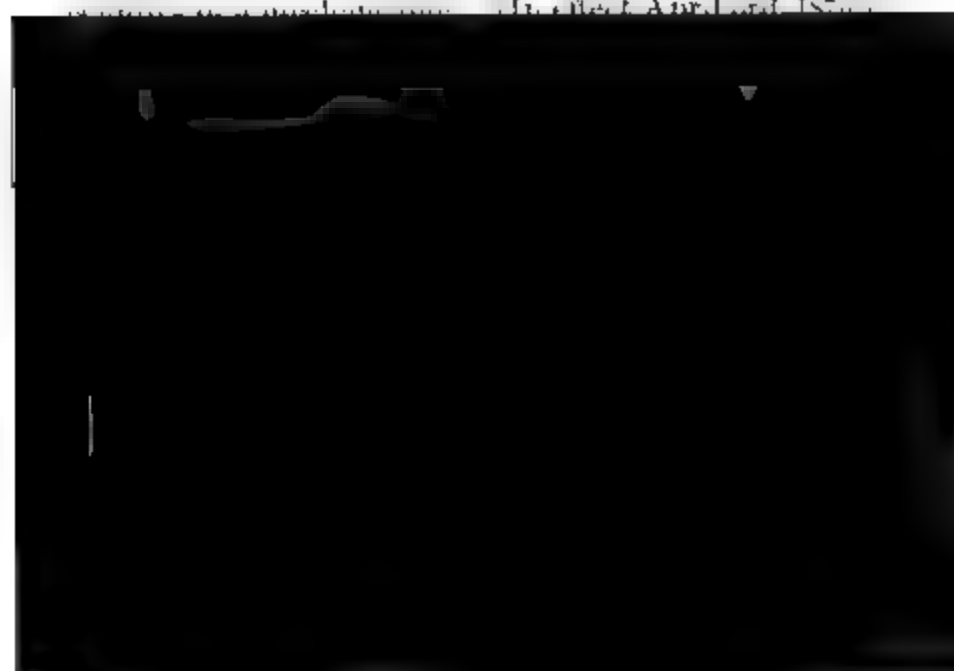
8. Presenting to any court having power to sentence upon any prisoner under conviction of any crime of such a nature as to require the attention of the court.

manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

170. Every person who maliciously and without probable cause procures a search-warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

171. Every person, not authorized by law, who, without the consent of the warden, or other officer in charge of the State prison, communicates with any convict therein, or brings into or conveys out of the State prison any letter or writing to or from any convict, is guilty of a misdemeanor.

172. Every person who, within two miles of the land belonging to this State, upon which the State prison is situated, or within one mile of the Insane Asylum at Napa, or within one mile of the grounds belonging and adjacent to the University of California in Alameda County, or in the State capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or exposes for sale, any vinous or alcoholic liquors,



a person of good character, and obtaining from such commissioner a permit describing such person and authorizing the landing, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months.

175. Every individual person of the classes referred to in the two preceding sections, brought to or landed within this State contrary to the provisions of such sections, renders the person bringing or landing liable to a separate prosecution and penalty.

176. Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

177. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. [Approved March 30th, in effect July 1st, 1874.]

178. Any officer, director, manager, member, stockholder, clerk, agent, servant, attorney, employe, assignee, or contractor of any corporation now existing, or hereafter formed under the laws of this State, who shall employ, in any manner or capacity, upon any work or business of such corporation, any Chinese or Mongolian, is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail of not less than fifty nor more than five hundred days, or by both such fine and imprisonment, *provided*, that no director of a corporation shall be deemed guilty under this section who refuses to assent to such employment, and has such dissent recorded in the minutes of the board of directors.

1. Every person who, having been convicted for vio-

lating the provisions of this section, commits any subsequent violation thereof after such conviction, is punishable as follows:

2. For each subsequent conviction, such person shall be fined not less than five hundred nor more than five thousand dollars, or by imprisonment not less than two hundred and fifty days nor more than two years, or by both such fine and imprisonment. [In effect February 13th, 1880.]

179. Any corporation now existing, or hereafter formed under the laws of this State, that shall employ, directly or indirectly, in any capacity, any Chinese or Mongolian, shall be guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five hundred nor more than five thousand dollars, and upon the second conviction shall, in addition to said penalty, forfeit its charter and franchise, and all its corporate rights and privileges, and it shall be the duty of the attorney-general to take the necessary steps to enforce such forfeiture. [In effect February 13th, 1880.]

CHAPTER VIII.

CONSPIRACY.

§ 182. Criminal conspiracy defined and punishment fixed.

§ 183. No other conspiracies punishable criminally.

§ 184. Overt act, when necessary.

§ 185. Wearing mask or disguise.

182. If two or more persons conspire—

1. To commit any crime;
 2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime;
 3. Falsely to move or maintain any suit, action, or proceeding;
 4. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses; or,
 5. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice, or due administration of the laws;
- they are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both. [Approved March 30th, in effect July 1st, 1874.]

Conspiracy—A conspiracy is a combination of two or more persons by concerted action to accomplish some criminal or unlawful purpose, or to accomplish some lawful purpose by criminal or unlawful means—see many cases cited in *Destj's Crim. Law*, § 112.

Subd. 1. To commit an indictable offense—29 Pa. St. 296, as, to kill—52 Cal. 251, or to rob—49 Ind. 186, or commit burglary—3 Tex. Ct. App. 192, or to kidnap—1 Low. 4 and Jar 4., or to seduce a female—3 Ill. 1., 9 How. St. 17, or entice and carry off a female—5 Rad. 62; 25 Ill. 23, 5 Watts & S. 461, or procure seduction of a girl—2 Den. C. 19, or persuade a girl to prostitution—1 Post & F. 101, 9 How. St. Tr. 15, or any offense—2 Camp. 227, as bigamy or incest—4 Pa. St. 226, or abortion—Bright 441.

Subd. 2. To charge one with crime—2 Mass. 536, 25 Ill. 70, 2 Dutch. 313, 5 Har. & J. 21., 2 Mass. 536; 53 N. Y. 1., 2 Pars. Cas. 367; 1 Leach 45, 2 Burr. 993; 1 Salk. 174, 7 L. Reporter, 58, 4 Barn. & C. 329.

TITLE VIII.

Of Crimes against the Person.

- CHAP.** **I. HOMICIDE.**
 II. MAYHEM.
III. KIDNAPPING.
IV. ROBBERY.
 V. ATTEMPTS TO KILL.
VI. ASSAULTS WITH INTENT TO COMMIT FELONY,
 OTHER THAN ASSAULTS WITH INTENT TO
 MURDER.
VII. DUELS AND CHALLENGES.
VIII. FALSE IMPRISONMENT.
IX. ASSAULT AND BATTERY.
X. LIBEL.

PEN. CODE.—8.

CHAPTER I.

HOMICIDE.

- § 187. Murder defined.
- § 188. Malice defined.
- § 189. Degrees of murder.
- § 190. Punishment of murder.
- § 191. Petit treason abolished.
- § 192. Manslaughter—voluntary and involuntary.
- § 193. Punishment of manslaughter.
- § 194. Deceased must die within a year and a day.
- § 195. Excusable homicide.
- § 196. Justifiable homicide by public officers.
- § 197. Justifiable homicide by other persons.
- § 198. Bare fear not to justify killing.
- § 199. Justifiable and excusable homicide not punishable.

187. Murder is the unlawful killing of a human being, with malice aforethought.

Murder, defined—34 Cal. 200; 47 Cal. 102; at common law—1 Wash. C. C. 463; 11 Cal. 225; 10 Cal. 37, 44 Cal. 96; 9 Met. 93, 5 Cush. 295, see 1 Cal. 66; 16 Cal. 207; 17 Cal. 100; 18 Cal. 100; 19 Cal. 100; 20 Cal. 100; 21 Cal. 100; 22 Cal. 100; 23 Cal. 100; 24 Cal. 100; 25 Cal. 100; 26 Cal. 100; 27 Cal. 100; 28 Cal. 100; 29 Cal. 100; 30 Cal. 100; 31 Cal. 100; 32 Cal. 100; 33 Cal. 100; 34 Cal. 100; 35 Cal. 100; 36 Cal. 100; 37 Cal. 100; 38 Cal. 100; 39 Cal. 100; 40 Cal. 100; 41 Cal. 100; 42 Cal. 100; 43 Cal. 100; 44 Cal. 100; 45 Cal. 100; 46 Cal. 100; 47 Cal. 100; 48 Cal. 100; 49 Cal. 100; 50 Cal. 100; 51 Cal. 100; 52 Cal. 100; 53 Cal. 100; 54 Cal. 100; 55 Cal. 100; 56 Cal. 100; 57 Cal. 100; 58 Cal. 100; 59 Cal. 100; 60 Cal. 100; 61 Cal. 100; 62 Cal. 100; 63 Cal. 100; 64 Cal. 100; 65 Cal. 100; 66 Cal. 100; 67 Cal. 100; 68 Cal. 100; 69 Cal. 100; 70 Cal. 100; 71 Cal. 100; 72 Cal. 100; 73 Cal. 100; 74 Cal. 100; 75 Cal. 100; 76 Cal. 100; 77 Cal. 100; 78 Cal. 100; 79 Cal. 100; 80 Cal. 100; 81 Cal. 100; 82 Cal. 100; 83 Cal. 100; 84 Cal. 100; 85 Cal. 100; 86 Cal. 100; 87 Cal. 100; 88 Cal. 100; 89 Cal. 100; 90 Cal. 100; 91 Cal. 100; 92 Cal. 100; 93 Cal. 100; 94 Cal. 100; 95 Cal. 100; 96 Cal. 100; 97 Cal. 100; 98 Cal. 100; 99 Cal. 100; 100 Cal. 100.

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eption of premeditation. Intentionation may be inferred
 from the use of the knife in the use of a weapon likely
 to cause death. See 4 Ill. App. 147, 4 Ill. App. 147, 2 A.S.M. 61
 or from the use of a knife in the use of a weapon likely
 to cause death, or from the use of a weapon likely to
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 the use of a knife in the use of a weapon likely to cause death. See 4 Ill. App. 147, 4 Ill. App. 147, 2 A.S.M. 61.

in the first degree - from a letter is presumed from pur-
poise and a plot, 211 Cal. 474 way of others - 45 Ala. 43, 40 Ind.
Cal. 41 1st, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859,

in the perpetration of a felony. 40 C.J. 1710 3-40 24-1
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in the second degree is the unlawful killing with malice aforethought, but without the intent to kill or the intent to inflict great bodily harm on the victim. It is a crime of the second degree. The court should not charge a first degree murder if the evidence shows that it was lawful, deliberate, and premeditated, and in

the first degree, and thus ignore evidence tending to show mitigating or extenuating circumstances, or to show homicide, justifiable or excusable—45 Cal. 291.

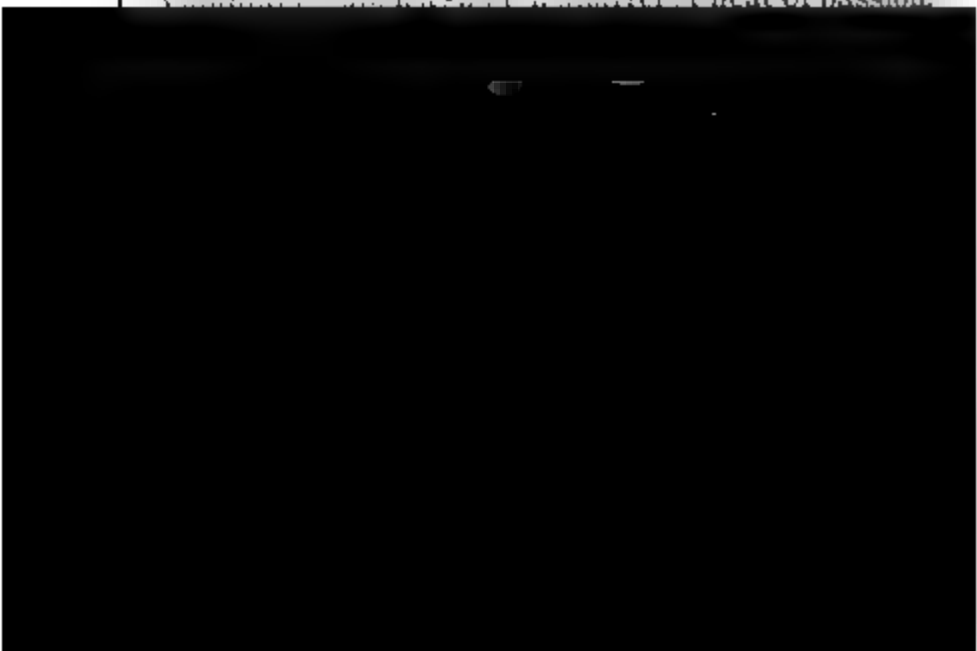
190. Every person guilty of murder in the first degree, shall suffer death or confinement in the State prison for life, at the discretion of the jury trying the same; or upon a plea of guilty, the court shall determine the same; and every person guilty of murder in the second degree, is punishable by imprisonment in the State prison not less than ten years. [In effect March 28th, 1874.]

Discretion.—Under the amendment of 1874, the duty imposed on the court is to exercise the same discretion when defendant pleads guilty, and the court finds the crime murder in the first degree, as is to be exercised by the jury when they find defendant guilty of murder in the first degree—49 Cal. 178. The nature of that discretion is to be ascertained from the language of the statute—*Id.*

191. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

192. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

1. Voluntary manslaughter, committed in the heat of passion.



id. 275; 1 Car. & K. 600; so if a patient dies for want of ordinary skill in the physician—9 Ired. 440; see also, 5 Car. & P. 533; 1 Moody C. C. 248; 4 Car. & P. 398; 3 id. 635; 6 id. 475; 3 Car. & K. 383; 4 Post. & F. 256; 10 Cox C. C. 486; id. 525; 12 id. 534. See Dosty's Crim. Law, § 7 a.

193. Manslaughter is punishable by imprisonment in the State prison not exceeding ten years.

194. To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Within a year and a day—6 Cal. 267; id. 210; 1 Dev. 139; 66 Mo. 126; 41 Tex. 496. See 3 Inst. 53.

195. Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Subd 1. Execution of malefactors—The execution of malefactors is an act of necessity when the law requires it, but the court issuing the warrant must have jurisdiction or it will be murder—otherwise if the warrant be merely informal. 1 Hughes, 500, 1 Hall, (S. C. 327, 50 Ala. 117, 32 M. 367, 18 Ohio St. 298, Winst. 144, 2 Den. C. C. 35. A subaltern can justify killing another only on the ground of orders from his superior, which are lawful. 1 Woods, 420.

Subd 2. Officers of the law—when their authority to arrest or imprison is resisted, may use force against force, even if death should be the consequence. 1 Hughes, 500, 18 Ohio St. 298, Winst. 144, 1 Hall (S. C.) 327, 50 Ala. 117, but not when the resistance is over and the necessity has ceased—see 50 Ala. 11. Even in case of a civil arrest if the lives of the arresting party are put in jeopardy. 1 Hill, (S. C. 137. Except in cases of riot, an officer is not authorized to kill a party, accused of a misdemeanor, if he fly from arrest—3 Houst. 565, 44 Tex. 125, 12 Cox C. C. 4.

Killing by an officer of a felon, to prevent his escape, is justifiable—2 Strange, 862, 2 Id. Raym. 154, 2 Car. & K. 343, Leigh & C. 294, 9 Cox C. C. 44, 4 Q. B. 959, but if he can be taken witho it such severity, it is at least manslaughter. 7 Car. & P. 153; Id. 156, 2 Abb. U. S. 280, 44 Tex. 545, 50, of a lawful arrest unlawfully executed—see 52 N. H. 492, 34 Conn. 132, 1 Vent. 216.

Subd 3. On an arrest. An officer is justified in killing one accused of felony if he resists and flees—1 Hawks, 456, 2 Den. C. C. 35, but necessity alone will justify the killing, and the authority to arrest must have been known—44 Ala. 41. The officer must show a felony committed and the object avowed, and a refusal to submit—2 Dev. 58. Killing by officers in riots, mobs, and unlawful assemblies if necessary to arrest offenders, is justifiable—8 Mich. 150. See 27 Cal. 572.

197. Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such per-

son, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony, or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Said. 1. In prevention of a felony.—The taking of life is justifiable when done to prevent the commission of a felony—3 Wash. C. C. 313; see 1 Hawk. 12, 67; 2 Dev. 2; 17 Ala. 267; 25 id. 13; 3 Iowa. 30; Thach. C. C. 471; 5 Mich. 136; 43 N. Y. 212; 5 Sawy. 434. There must be a well-grounded belief that a felony is about to be committed—1 Hawk. 67; 1 Jones, (N. C.) 140; 5 Mich. 136; 25 Gratt. 267; which can be prevented only by the killing of the supposed felon—5 Mich. 136; 17 Ala. 267; 25 id. 13; Cro. Car. 324.

Said. 2. Defense of habitation.—The use of fatal means of defense must be necessary to protect the life of defendant or of his family, or to protect from a great loss, or harm—43 Vt. 204, 8 C. 1 Green 1, 12, 204. Taking of life is justifiable only when the entry is made by a violent, armed, and dangerous felon.



The danger. — To justify killing, the defendant must have been in real or apparent danger—10 Bush, 445, 8 C 1 Am. Cr R 243, Imminent and immediate—33 A 2d, 100, 11 R 2, 37 Miss 321, 3 Wash C. 2, 315, 35 Cal. 701, 11 Mo. 5, 5 Sawy 620, 52 Miss 23, existing at the time of striking the fatal blow—4 N Y 360. It is not necessary that the danger should in fact exist, actual and real danger to the defendant's comprehension as a reasonable man, is sufficient. 3 Cal. 35, 44 Cal. 65; 10 Bush 445, 8 C 1 Am. Cr R 243, 47 Ill 376, 9 Nev 102, 13, 38, 10 120, 15 Ala. 17, 19 B. Mon. 49, 2 Curt. 1, 13 Kan 44, 77 Ill 494, a belief of imminent danger is sufficient. 4 Pa. St. 152, 2 Am. Cr R 284. His guilt must depend on the circumstances as they appeared to him at the time—7 Ill 25, and if he had reasonable ground for apprehension, even though appearances were false, the killing will be justifiable—4 Cal. 65, 40 Barb 63, 4 Parker Cr R 35, 3 Henk 76, 8 C 1 Green C. 245. See 47 Mo. 604, 50 Ill 257, 8 Mich 150, 18 11 314, 33 Ill 403, 84 Pa St 128, 8 C 2 Am. Cr R 284, 10 Bush, 445, 8 C 1 Am. Cr R 243, 2 Wright 265; 32 Conn. 5. See Dwyer's Cr. Law, § 31 b. As to duty to avoid danger, see Dwyer's Crim. Law, DOCTRINE OF RETREAT, § 31 c.

Fear—A bare fear, grounded on threats, is not a justification for homicide, and nervous fears are no excuse—4 Misc. 311, 44 N. Y. 2d 131. **Horr & L.**, 34 Misc. 2d 413, 34 N. Y. 2d 484, 58 A. 2d 616, 11 R. 677, 19 M. 2d 323, 3 Cal. 2d 304, 18, 2 N. Y. 2d. The criminal law is not concerned with the motives for the fear as well as with the passion—411. **101**—The fear to excuse must be a fear of death or serious bodily injury, and not a fear of exposure or loss of honor or reputation—211. **3**—7, 24 Ill. 2d 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 87

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CHAPTER II.


MAYHEM.

§ 303. Mayhem defined.

§ 304. Mayhem, how punishable.

303. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem. [Approved March 30th, in effect July 1st, 1874.]

Offense under statute.—The statutory offense covers all malicious disabling of the person—3 Conn. 112; 25 Ala. 30; 11 Bush, 603; 60 Mo. 141; 50 N. Y. 398, 63 id. 207; 25 Ohio St. 385; 4 Oreg. 224; 8 Serg. & R. 334. It consists in depriving a human being of a limb or member of his body, and rendering him defective in bodily vigor, whatever means or instrument may be used—4 Ark. 56; and disfigurement of person is sufficient—10 Ala. 928; maliciously and designedly in pursuance of a purpose formed during the conflict—3 Ala. 457; 49 id. 18; 22, putting out an eye—7 Humph. 161; 3 Alb. L. J. 140; or, biting off part of an ear—1 Fred. 121; 7 id. 33. As to common-law offense—see Dasty's Crim. Law, title MAYHEM.



CHAPTER III.

KIDNAPPING.

§ 207. Kidnapping defined.

§ 208. Punishment of kidnapping.

Every person who forcibly steals, takes, or carries away any person in this State, and carries him into another country, State, or county, or who forcibly takes or carries away any person, with a design to take him out of this State without having established a claim according to the laws of the United States, or of this State, or who persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to leave this State, or to be taken or removed therefrom, with purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to use him for his own use, or to the use of another, without the free will and consent of such persuaded person, is guilty of kidnapping.

Kidnapping defined.—It is the unlawful removal, stealing, or carrying away of a person from his own State or country, against his will. 1 C. L. 6th ed. § 752; 4 Bl. Com. 219; Bonv. Law Dic.; Jacob's Dic.; Bell's Dic. Transportation to a foreign country is not necessary. N. H. 350. The offense is complete although the ship be not ordered to leave the State—15 Cal. 332. Procuring the intoxication of a sailor, with the design to ship him, is sufficient—25 N. Y.

Abduction of children.—In California, under an earlier statute, the child must be accompanied with a removal into another county, or territory; but under a later statute, an intent to conceal or to defraud is the gist of the offense—15 Cal. 332. A child, taken by the mother from the legal custody of its mother, must be deemed to be taken without her consent—41 N. H. 63. The forcible taking away a child without the will of its father, is an assault, though both the child and father consent—5 Alien, 518.

Kidnapping is punishable by imprisonment in the State prison not less than one nor more than ten

CHAPTER IV.

ROBBERY.

- § 211. Robbery defined.
- § 212. What fear may be an element in robbery.
- § 213. Punishment of robbery.

211. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Requisites of offense.—The property taken should belong to a person other than the defendant—21 Cal. 344; where title is *bona fide* claimed by the defendant the case falls—36 Ark. 176; 3 Car. & P. 400. The taking must be from the person, or in the presence of the party robbed—1 Wash. C. C. 209, 4 Binn. 379; 1 Ohio St. 422; 11 Humpl. 157; 3 Cold. 350; 39 Ga. 583, 8 Car. & P. 49; 2 East P. C. 708. If force is used, fear is not an essential ingredient—4 Binn. 379, 7 Ired. 339; 7 Mass. 242; 55 N. H. 152; 73 N. C. 83; 35 Ind. 460; 5 R. I. 60. So, to knock a man down, and, while insensible, to take his property from him, is robbery—1 Leach, 320. There must be a taking, and carrying away—1 Leach, 362.

The taking.—The goods must be taken *animus furandi*, as in larceny—3 Cal. 250, 3 Humpl. 114, 4 Ohio St. 539; 41 Iowa, 200, 71 N. C. 50. It in-

in the indictment it must be proved—6 Bush, 436, and this will be sufficient without actual force—1 Duvall, 150; 58 Mo. 581. Any threat calculated to produce terror is sufficient—12 Ga. 293; 2 East P. C. 734; as threatening to take and destroy one's child—2 East P. C. 734; or threatening to destroy one's house—2 East P. C. 731; or threatening to charge one with an unnatural crime—12 Ga. 293; 7 Humph. 45; 1 Leach, 139; id. 193; Russ. & R. 146; Moody C. C. 261; even where the fear is only as to loss of character—1 Parker Cr. R. 199; 1 Leach, 278; Russ. & R. 375; 2 East P. C. 231.

213. Robbery is punishable by imprisonment in the State prison not less than one year.

CHAPTER V.

ATTEMPTS TO KILL.

§ 216. Administering poison.

§ 217. Assault with intent to commit murder.

216. Every person who, with intent to kill, administers, or causes or procures to be administered, to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the State prison not less than ten years.

Administering poison.—Poison means any substance which by its own inherent qualities is capable of destroying life. "Noxious or destructive substance or liquid," includes substances which act on the system mechanically, so as to destroy life—§3 Cal. 147. Where defendant was charged with administering a large quantity of a certain deadly poison called red oxide of mercury, is sufficient charge under section—§4 Cal. 54.

217. Every person who assaults another, with intent to commit murder, is punishable by imprisonment in the State prison not less than one nor more than fourteen



CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT FORNERY, OTHER THAN
ASSAULTS WITH INTENT TO MURDER.

§ 220. Assault with intent to commit rape.

§ 221. Other assaults.

§ 222. Administering stupefying drugs.

220. Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the State prison not less than one nor more than fourteen years.

Assault to commit rape.—An assault implies force and resistance, so there can be no assault on a consenting female—47 Cal. 450; 11 Nev. 255, 8 C. 21 Am. Rep. 754, 32 N. Y. 528, 54 Ala. 178, 7 Car. & P. 25; 10 Cox C. C. 114; 12 N. J. 180. There must be actual attempt with force, and against the consent of the female—30 A. a. 54, 22 Wis. 580, but the charge may be sustained when the person assaulted was incapable of giving consent, as from infancy—78 N. C. 209, Law R. 2 C. C. 10, see 11 Nev. 255, or from idiocy or mania—26 I. p. 4 an Q. B. 373, or where acquiescence was procured by fraud—3 Ark. 360, 53 Ala. 453, 29 Ark. 116; 32 Ill. 704; 11 Ga. 225, 50 Barb. 144, 14 Gray. 415, 47 Iowa, 151, 4 Leigh. 649, 23 Mich. 356, 12 Ohio St. 466, 22 Wis. 580, 45 Id. 86, Law R. 1 C. C. 150, 11 2 C. C. 10, 8 Car. & P. 286, 1 Car. & K. 415, 4 Post. & F. 967, see 2 Cox C. C. 443. See Desty's Crim. Law, title RAPE. In case of young girls it is sufficient if their persons were indecently interfered with without their assent—18 Ill. 336, 13 Id. 48, 1 H. L. 251; and even resistance is no defense when the defendant is a schoolmaster, and the person assaulted is his pupil—Riss. & R. 130, 6 Cox C. C. 64; 9 Car. & P. 22, or where a medical practitioner unnecessarily strips a female patient—1 Moody C. C. 19.

Liability of parties. All persons present, aiding and assisting, are principals—14 Mich. 1, but they must aid and assist—45 Cal. 293, and either a boy under fourteen, or a husband may be liable as aiding and abetting—Id.; 24 Mich. 1, 2 Allen. 13, 12 Mod. 340, 8 Car. & P. 756, see 74 Mass. 489. A person cannot be convicted on the uncorroborated testimony of the woman—5 Cal. 271, 8 C. 2 Am. Cr. R. 590, 46 Cal. 340; 6 Id. 211, 41 Iowa. 82. But see 29 Conn. 349. An indictment charging this offense need not strictly follow the language of the statute, words conveying the same meaning may be employed—53 Cal. 629, it need not allege that the force or violence was against her resistance. If there is no resistance, or resistance of an equivocal character, the conviction will be set aside—47 Cal. 450.

Assault with intent to rob.—Whether the intent was to rob, is in the province of the jury to determine—48 Cal. 82.

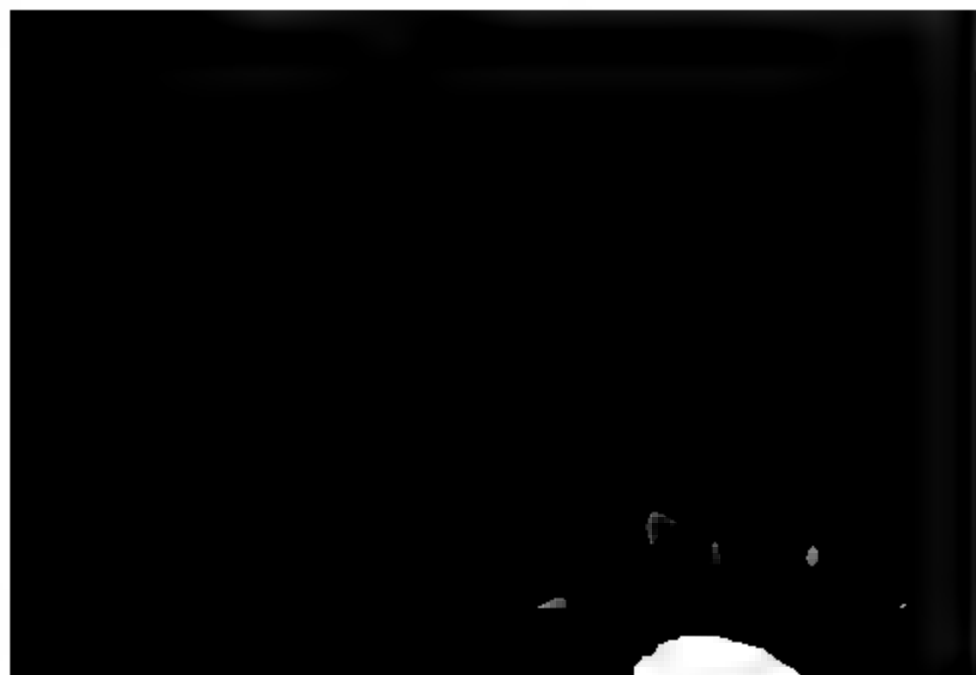
Assault with intent to maim.—An intent to maim is necessary—55 Cal. 331.

221. Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the State prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both.

Assault with intent to commit felony.—The perpetration of an assault, with intent to commit a felony, is a felony—2 Blackf. 8; 36 Ma. 181. But see 4 Mass. 439; and a person may be indicted for an assault and battery with intent to commit a felony—8 Blackf. 575; 23 Ind. 136; 77 id. 15; 53 id. 334; 17 N. H. 253; 16 Ind. 237; 29 id. 89; 34 id. 343; 17 Up. Can. C. P. 129. There is no material difference between an assault with intent and an assault with an attempt to commit a crime—14 Ga. 25; 2 Ind. 220. See 14 Ala. 411.

222. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anæsthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

Administering drugs, with intent to influence the passions, is an assault—114 Mass. 269; 5 Mich. 10. See 1 Wheel. C. C. 269.



CHAPTER VII.

DUELS AND CHALLENGES.

- § 225. Duel defined.
- § 226. Punishment for fighting a duel, when death ensues.
- § 227. Punishment for fighting a duel, although death does not ensue.
- § 228. Persons fighting duels, etc., disqualified from holding office, etc.
- § 229. Posting for not fighting.
- § 230. Duties of officers to prevent duels.
- § 231. Leaving the State with intent to evade laws against dueling.
- § 232. Witness' privilege.

225. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel.

Duel defined. An agreement to fight with loaded pistols, and actually fighting in pursuance of the same, is a duel—1 Blackf. 377, 5 Strob. 33; 8 Humph. 84, 4 Yerg. 143, 5 Id. 356. The *gravamen* of the offense is consent, if that took place in this State the statute offense is complete—58 Ala. 357. If fought in presence of spectators it is an aggravated affray—see 1 Russ. Cr. 9th ed. § 406. In California, fighting a duel without fatal result is a specific offense—14 Cal. 651. See 9 Leigh, 605.

226. Every person guilty of fighting any duel, from which death ensues within a year and a day, is punishable by imprisonment in the State prison not less than one nor more than seven years.

When death ensues.—In case of deliberate dueling, if death ensues, it is murder—4 Dev. & B. 491, 44 Miss. 763, and consent will not excuse—31 Ga. 411, 17 Wend. 251. In California, it is a special offense—14 Cal. 651.

227. Every person who fights a duel, or who sends or accepts a challenge to fight a duel, is punishable by imprisonment in the State prison or in a county jail not exceeding one year. [Approved March 30th, in effect July 1st, 1874.]

228. Any citizen of this State who shall fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid

or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage, and shall be declared so disqualified in the judgment upon conviction. [In effect April 6th, 1880.]


Disqualifications.—A statute which provides that the offender shall be incapable of holding any office of honor, trust, or profit, is constitutional—*12 Johns*, 437; *5 C. & Cowen*, 624. See 16 Bush, 725; see Const. Cal. art. ix § 2.

Challenging and accepting challenges—see Dexty's Crim. Law, § 94b.

Remedies by action for injuries arising from duelling—see Civ. Code, §§ 3347, 3348.

229. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

230. Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.



CHAPTER VIII.

FALSE IMPRISONMENT.

§ 236. False imprisonment defined.

§ 237. False imprisonment, how punished.

236. False imprisonment is the unlawful violation of personal liberty of another.

False imprisonment is any unlawful restraint of one's liberty by force and an array of force, without bolts or bars, in any locality—7 Humph. 43; 81 N. C. 523; but there must be a detention of person, and unlawfulness of the detention—13 Fla. 675, 8 C. 1 Green 322; and the detention will be presumed unlawful—3 Tex. Ct. 221. It is not necessary to be touched or actually arrested—Bald. detention through threats is sufficient—3 Tex. Ct. App. 108, as a person, by threats, from proceeding on a highway—3 Sneed, 10 prevent a man from moving as he sees proper—7 Humph. 43; Ct. App. 204, 1d. 108; 6 Id. 452; or to forcibly detain a person on street—13 Ark. 43.

237. False imprisonment is punishable by fine not exceeding five thousand dollars, or by imprisonment in the jail not more than one year, or both.

Imprisonment.—False imprisonment is a trespass—5 McLean, 267; 3 McH. 260; 2 N. H. 401; 5 Wend. 170; it is an assault, or an assault battery—17 Ala. 440; and it is a misdemeanor—33 Cal. 158.

CHAPTER IX.

ASSAULT AND BATTERY.

- § 240. Assault defined.
- § 241. Assault, how punished.
- § 242. Battery defined.
- § 243. Battery, how punished.
- § 244. Assaults with caustic chemicals.
- § 245. Assaults with deadly weapons.

240. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Assault defined.—An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another—2 Wash. C. C. 435, 52 Ala. 391; an apparent attempt by violence to do corporal hurt to another—1 Hill, 251, 1 Ire 1 128, 3 Id. 186, 10 Mass. 467; 114 Mass. 323, 6 Tex. Ct. App. 289, 1 Sneed, 606, 2 Wash. C. C. 435, 41 Tex. 546, 1 Car. & K. 639, a manifestation by acts of a present purpose to do unlawful violence on another—17 Up. Can. C. P. 139, an attempt to commit a battery—44 Tex. 45, 8 C. 1 Am. Cr. R. 46, for where there is not an apparently real approaching injury, there is no assault—47 Ala. 354, 9 Allen, 280, 39 Miss. 501, Phill. (N. C.) 434, 34 Tex. 286. It is enough if the adaptation of the means to the end is apparent so as to impress alarm on persons of ordinary reason—41 Ala. 354, 45 Id. 43, 23 Ind. 220, 81 N. C. 615, 41 Tex. 468, 28 Ga. 35, 5 Cush. 365, 26 Ga. 611, 65 N. C. 334. If apparent leading another to suppose that he will do what he apparently attempts, it is an assault—151 236, 4 Car. & P. 34, as offering to strike, and rushing at one—27 Cal. 633, 1 Fred. 125, 11 N. C. 236; 63 N. C. 13, 65 Id. 507, 22 Nev. 284, 4 Car. & P. 34, or assuming a threatening attitude and the effect is to terrify—41 Ala. 4, 2 Ill. 457, 10 Iowa, 159, 10 Mass. 467; Phill. (N. C.) 168, 3 Tex. 54, 41 Id. 40, 9 Car. & P. 483, as pointing a gun or pistol at another—2 Humph. 457, 6 Iowa, 126, 11 Fred. 545, 8 Id. 544, 5 A. C. 18, 10 Mass. 467, whether armed or not—2 Humph. 457, 33 Ala. 413. There may be an assault without personal injury—10 Iowa 57, as where he fails to commit the injury intended—20 Tex. 44, as shooting at another—24 Ga. 390, 20 Ill. 73, 36 Id. 424, 41 Ill. 308, as shooting a person with a gun—33 Ala. 363, although the attack was in stratagem to produce fear—7 Cal. 65, 10 Kan. 81, 1 Ire 1 11, 65 N. C. 53, 4 Car. & P. 34. It may be committed on one or more by the same act—Phill. (N. C.) 134, 34 Tex. 2, but it must be done on a *person* and not on an animal near such person—5 Cal. 406.

Instances of assaults—see Desty's Crim. Law title ASSAULT. Where there was no intent to injure, there can be no conviction—5 Cal. 547, 2 Wash. C. C. 435.

Intent. There must be an intent to strike—27 Cal. 633, 9 Ala. 79, 34 Id. 363, 6 Tex. Ct. App. 465, and an attempt to do so—27 Cal. 633, 9 Ala. 79, 13 Id. 54, 24 Ill. 363. The criminal act and intent must concur, but if it is apparent that he will act it is sufficient, though he be

is not an assault.—Mere words will not constitute an assault—1 Ala. 32; 32 N. Y. 525, 30 Wis. 313, 33 Tex. 517; but they may be received in evidence to show the intent—65 N. C. 354; see 1 Serg. & R. 124. If they accompany an act showing an intent not to commit the act, the act is not an assault; as a threatening act accompanied by the word "if"—9 Arch. 79; 1 Ired. 125, 1 Serg. & R. 347; 1 Sneed, 1 Ga. 237, 3 Ired. 186, 1 N. J. 375, 9 Car. & P. 615, 1 Mod. 3. Menaces and threatening gestures must be accompanied with an intent to inflict the injury threatened. 27 Cal. 63; 39 Miss. 521, 4 Eng. 1; 32 Tex. 593; 2 Tex. Ct. App. 244, 6 Id. 465; 18 Ala. 547, 9 Id. 363, 44 Tex. 43, S. C. 1 Am. Cr. R. 46.

1. An assault is punishable by fine not exceeding hundred dollars, or by imprisonment in the county not exceeding three months.

Comment.—The party may be imprisoned for the fine, but not for more—45 Cal. 345.

2. A battery is any willful and unlawful use of force or violence upon the person of another.

It is defined.—A battery is an unlawful touching of the person of another, or by any substance put in motion by him—43 Ind. 100. Up. Can. Q. B. 619; an unlawful and unjustifiable use of violence, however slight—1 Gray, 61, S. C. 1 Lead. C. C. 235, 2 Met. 24, 6 App. 465, if done without consent of the person. Law Rep. 1 12; 11, 12; 26 Up. Can. Q. B. 320. It is the slightest unlawful touching, willfully or in anger—Bald, 571; 43 Ind. 146, 17 Tex. 515; 15 Ala. 32. "Person" includes wearing apparel, or a cane held in the hand in a house in which the person resides—1 Hill, (S. C.) 46.

Battery and battery.—Where two persons mutually fight by agreement, each is equally guilty of a several and distinct offense—19 Ark. 18; 119 Mass. 350; S. C. 1 Am. Cr. R. 39; Phill. (N. C.) 237; 7 Ala. 14; 14 Ohio 54; 47; 5 Penn. 356; 1 Hill (S. C.) 36; there

—17 Ala. 546; 10 Minn. 409, or bringing on an affray—78 N. C. 431; or attempting to retake money, fraudulently gotten, from him—6 Barb. (Tenn.) 608; or, without a warrant, attempting to arrest a fugitive, is an assault and battery—79 N. C. 605.

What not assault and battery. Where one, in doing a lawful act, accidentally injures another—1 Strange, 140, or where one injures another in friendly athletic sport—11 N. H. 540; or snatching from a person's hand—2 Cass. 290, or arresting a man apparently intoxicated; it is not an assault and battery—4 Gray, 65, 123 Mass. 433.

Enforcing discipline.—The master of a vessel may chastise a seaman moderately—1 Ware, 83, 10. 506, 3 Story, 120, 2 Sum. 584; see 4 Mason, 503, 7 Ben. 355. An officer on duty may correct in moderation—75 N. C. 249, 43 Tex. 93, 1 Tex. Ct. App. 684, as the superintendent of a poor-house—58 Ind. 516, S. C. 2 Am. Cr. R. 176, 34 Conn. 132.

Parent and child, etc.—Every parent may chastise his child in moderation—2 Humph. 283, 21 Mass. 66, 1 Brewst. 311; 54 Ga. 281; 3 Head, 455; 82 Ill. 395, 62 Id. 354, 13 Iowa, 483, see 6 Tex. Ct. App. 133. So as to guardians—43 Tex. 167, or persons *in loco parentis*—63 N. C. 322, 63 Id. 1, so as to teachers—2 Dev. & B. 365, 4 Ind. 290, 4 Id. 632, 1 City H. Rec. 51; 4 Gray, 36, 68 N. C. 322, 62 Ill. 354, 45 Iowa, 248, 5 Pa. L. J. 78, 40 Barb. 541, 27 Vt. 755, 3 Head, 455. A master who stands *in loco parentis* may chastise his apprentice moderately. Addis. 324, 2 Pa. 66, 402, 1 Ashm. 267, 6 Tex. Ct. App. 133, 1 Wheel. C. C. 155. A teacher is guilty of assault and battery in excessively chastising a pupil—4 Gray, 58, 8 Low. Can. Jur. 173, a master has no right to whip a hired servant—1 Ashm. 267, 10 Conn. 457, 6 Tex. Ct. App. 133, 2 Chic. 195.

243. A battery is punishable by fine of not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both. [Approved February 26th, 1881.]

Punishment.—An assault without a deadly weapon is a misdemeanor or only—43 Cal. 283, 6 Id. 563.

244. Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the State prison not less than one nor more than fourteen years.

245. Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable by imprisonment in the State prison, or in a county jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both. [Approved March 30th, in effect July 1st, 1874.]

Assault with deadly weapon.—An assault with intent not to do murder, but a lesser bodily harm, is not a felony, unless resort is had to means of a deadly nature—45 Cal. 283; 6 Id. 562; 43 Ill. 340. "To do bodily harm on a person," and "to inflict on the person of another a bodily injury," are of the same import—44 Cal. 94, distinguishing 9 Id. 260. It is a distinct offense from an assault to do murder, but is necessarily included in that charge in the indictment—44 Cal. 94, 5 Id. 33; 40 Id. 42b. See 30 Cal. 218. The indictment should charge the offense in the language of the statute, and should allege that the weapon was deadly, or such facts as necessarily show that it was deadly—21 Cal. 579. An averment that defendant was armed with a deadly weapon, and made an assault, is not an averment that the assault was made with a deadly weapon—32 Cal. 451. The name of the weapon is not a necessary ingredient, its nature alone is important—44 Cal. 94. See 6 Cal. 562. Where defendant was convicted and was sentenced to imprisonment in the county jail, no appeal lies from the judgment—33 Cal. 428.

Offense generally.—The danger to life must be a real danger—2 Curt. 241. A deadly weapon is one calculated to produce death, or great bodily harm—6 Tex. Ct. App. 46, 2 Id. 13, as a bowie-knife—24 Ga. 286, a pistol used as a cludgeon—41 Id. 55, weights and stones—28 Id. 79; 30 Id. 138; a champagne bottle—33 Id. 217, or one which in the manner used, is capable of producing death or great bodily harm—4 Tex. Ct. App. 327, see 1 Id. 640, 6 Jones, (N. C.) 505. An assault with a deadly weapon is *ipso facto* an aggravated assault—23 Tex. 582; 6 Tex. Ct. App. 663. To constitute an assault with a gun it is not necessary that it be raised to the shoulder—27 Mo. 255; but there must be an act indicative of an effort to shoot, or otherwise use the weapon—42 Tex. 576; 23 Id. 574; 7 Tex. Ct. App. 77.

CHAPTER X.

LIBEL.

- § 242. Libel defined.
- § 243. Punishment of libel.
- § 244. Malice presumed.
- § 245. Truth may be given in evidence. Jury to determine law and fact.
- § 246. Publication defined.
- § 247. Liability of editors and publishers.
- § 248. Publishing a true report of public official proceedings privileged.
- § 249. Extent of privilege.
- § 250. Other privileged communications.
- § 251. Threatening to publish libel. Offer to prevent publication, with intent to extort money.

242. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or to expose the nakedness or other defects of one who is

thousand dollars, or imprisonment in the county jail not exceeding one year.

250. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Malice in law.—On the intentional publication by another of matter which is libelous, malice in law will be implied, whatever the motives in fact may be—3 Pick. 304, 9 Met. 410, 13 Pick. 337, 7 Cowen. 612.

251. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact.

Justification.—To constitute a justification, the answer must aver the truth of the publication—9 Cal. 536, 43 Id. 379, 2 Hill, 243, 9 Met. 410, 13 Pick. 337, 7 Fred. 180, but if the libel assert the defamatory matter only as the belief of the author, or as rumor, or general suspicion, it cannot be justified by proof that the author believed it to be true—41 Cal. 280, 4 Conn. 403, 8 Wend. 606, 11 Price, 235, 1 Holt, 53, 6 Bing. 215. But proof that he believed it to be true may be admitted in mitigation of punishment—9 Ala. 447, 4 Man. & R. 65, 4 Barn. & Ald. 314.

252. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel, under circumstances which exposed it to be read or seen by any other person than himself.

Publication defined.—The offense is committed by sending the libel to the one libeled, though it reaches the ear of no third person—7 Conn. 228, 2 Yerg. 541. The transmission of a sealed letter containing libelous matter is indictable—3 Hump. 112, 6 Ga. 156.

253. Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

Liberty of the press.—Every citizen has the right of investigating the conduct of those who are intrusted with public business—1 Dall. 23; being responsible for the use of that liberty—3 Yeates, 520, 4 Ill. 269, 3 Pitts. R. 449. The guarantee of freedom of speech applies to words spoken or published in regard to judicial conduct or character—79 Ill. 45. See Const. Cal. art. I, sec. 9. Not only the liberty of the press must be preserved, but liberty of written as well as oral discourse in all relations where there is a duty to speak, and if what is

written under such a duty goes no further than duty demands, it is not indictable unless express malice is shown, otherwise if it goes beyond the line of duty—2 Bosw. 537, 1 Denio, 41, 6 Gray, 94, 21 How. 202, 11 M. 1 95, 9 N. H. 34, 12 Pick. 163, 5 I. Ind. 54, Law R. 9 C. P. 393, 7 Et. & B. 229. The editor is answerable in law if the contents of his paper are libelous, unless the matter was inserted by some one without his order and against his will—Thach. C. C. 346.

254 No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Reports of official proceedings—Where a report of judicial proceedings, though accurate, is accompanied by comments and insinuations to asperse a man's character, it is libelous—3 Pick. 304, 7 Johns. 264, see 2 Pick. 113, 1 Barn. & Ald. 379. Counsel are protected when they keep within what is material to the cause, but not when they overstep this bound—Smith J. P. 491, 2 Camp. 369, 5 Esp. 173, 1 Barn. & Ald. 379. Whereupon affidavit of a cause the judge makes an order of court for adding any publication of the proceedings, the publisher cannot shield himself from indictment on the ground that the libel was a correct report of what was done—see 9 Ala. 447, 1 Ld. Raym. 148, 4 Term. Rep. 285, Moody & M. 165.

255. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

256. A communication made to a person interested in the communication, by one who was also interested, or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

Privileged communications.—Privileged communications are such as rebut the *prima facie* inference of malice but this may be answered by proving malice in fact—20 Mass. 39, 2 Camp. M. & R. 156. As communications to the executive or administrative power—5 Johns. 508, 1 Va. Cas. 16, 2 W. & A. C. C. 495, 3 W. & A. 158, 3 Car. & P. 141. See 73 Mass. 28, 31 Pitts. Rep. 44, 19 N. Y. 176, 5 Minn. 135, 10 Cal. Q. R. 516, 21 see 11 p. Can. L. J. 156, or letters or reports in writing of public officers in the ordinary course of their duty—Law R. 8 Q. R. 103, id. 41, 5 Harl. & N. 808, 1 Esp. 226. So bona fide communications as to the character of candidates for office are privileged—4 Car. & P. 146, Moody & M. 18, 5 Scott. 340, Law R. 1 Q. R. 606 but see 21 How. 202. But libelous statements made to him are one in office, or a candidate for office, are not privileged—13 Abb. Pr. 41, 9 Minn. 188, 19 N. Y. 172. Confidential communications, by persons occupying fiduciary positions, as letters to employer, to inform of malpractice of employees—

. 268; or of a master in giving a correct character of a servant in inquiry made of him—3 Man. & R. 101; 4 id. 338; 4 Burr. 2425; P. 8; but otherwise, if false answers be given—4 Barn. & C. 10. Other privileged communications, see Desty's Crim. Law, BEL.

Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel against another person, with intent to extort any money or valuable consideration from any person, is guilty of a misdemeanor.

TITLE IX.

**Of Crimes against the Person and against Public
Decency and Good Morals.**

- CHAP. I. RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION, §§ 261-7.
- II. ABANDONMENT, AND NEGLECT OF CHILDREN, §§ 270-2.
- III. ABORTIONS, §§ 274-5.
- IV. CHILD-STEALING, § 278.
- V. BIGAMY, INCEST, AND THE CRIME AGAINST NATURE, §§ 281-7.
- VI. VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD, §§ 290-7.
- VII. CRIMES AGAINST RELIGION AND CONSCIENCE,

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

- § 261. Rape defined.
- § 262. When physical ability must be proved.
- § 263. Penetration sufficient.
- § 264. Punishment of rape.
- § 265. Abduction of women.
- § 266. Seduction for purposes of prostitution.
- § 267. Abduction.
- § 268. Seduction under promise of marriage.
- § 269. Intermarriage subsequent to seduction.

261. Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances :

1. Where the female is under the age of fourteen years.
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent
3. Where she resists, but her resistance is overcome by force or violence
4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution ; or by any intoxicating, narcotic, or anæsthetic substance, administered by or with the privity of the accused
5. Where she is, at the time, unconscious of the nature of the act, and this is known to the accused
6. Where she submits, under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to produce such belief. [Approved March 6th, 1889]

Rape defined. Rape is the unlawful carnal knowledge of a female, by force, without her consent. 4 Bl. Com. 210, 2 Arch. C. Pr. 152, 1 East P. C. 434, of any woman above the age of ten years unlawfully against her will. 2 Ark. 389, 1 Ga. 224, 39 Me. 21, 9 Mich. 150, 47 Miss. 609, 35 Wis. 364; *without her consent, and against her will, are*

100 R. 317; but see *Leigh*, 222; 50 Barb. 122.

4. **Preventing resistance.**—Ceasing resistance under fear of great bodily harm, makes the consummated act rape—3 Ala. Ark. 360, 21 Kan. 138, 2 Swan, 334, 4 Post. & P. 667. The offense is committed, though the woman at last yielded to the violence, consent was forced by fear of death, or by duress—33 Mich. 363, 184; 6 Car. & P. 748. It is not necessary that she have a reasonable apprehension of death—40 Ala. 325; it is sufficient if she considers resistance dangerous, or absolutely useless—33 Mich. 363, 4 184, 8 Car. & P. 748. The circumstances calculate to give effect to the violence or threats are to be considered on the question of consent—45 N. H. 148, 36 Ga. 263; 74 N. C. 415; 2 Tex. Civ. App. 346. She was quite overcome by fear and terror, with as much resistance as was possible under the circumstances—15 Up. Can. C. P. 376. See 30 Ala. Ark. 360, 21 Kan. 138, 2 Swan, 334. It is a question for the jury to determine—8 Car. & P. 722; 6 Cox C. C. 64; 16 Up. Can. C. P. 378.

5. **Administering drugs, with intent to inflame the passions, is an act of rape.**—34 Mass. 303, 5 Mich. 16, see 1 Wheel. C. C. 40, otherwise at common law—54 Ind. 128, 1 Cox C. C. 282, 2 Car. & K. 512.

6. **Unconscious submission during sleep is no consent.**—12 O. 311, 8 C. 1 Green C. R. 317, 35 Ga. 263, or, where she was asleep—54 Me. 24, 105 Mass. 376.

7. **Artifice and fraud.**—Acquiescence by a married woman, her defendant for her husband, is no defense—50 Barb. 144; 1 R. C. C. 487, 8 C. 2 Lead C. C. 254, as, where the act was fraudulently committed, she being under such impression—7 Can. 54, 2 Swan, 334, 30 Ala. 54, 76 N. C. 1. Where carnal knowledge obtained under circumstances which induced the woman to suppose defendant was her husband, it is not rape, was held in 105 Me.; 1 Wheel. C. C. 378, 13 Ark. 360; 6 Eng. 350; 6 Cox C. C. 412; 13 Up. Can. Q. B. 116, 11 Cox C. C. 131, 8 Car. & P. 265; but they would be liable for an assault—8 Car. & P. 265, *id.* 256, 7 N. C. 61. See 3 Car. & P. 396.

8. **Proof of actual penetration is sufficient.**—40 Ala. 325. The

Liability of parties.—All persons present, aiding or assisting, are principals, but they must be actually aiding and assisting. 45 Cal. 90; 24 Mich. 1, see 12 Bush. 13, 46 Iowa, 269, 89 a person standing by and doing no act to aid or assist is not guilty. 45 Cal. 23. A person cannot be convicted on the uncorroborated testimony of the woman. 51 Cal. 311, 8. C. & Ann. Cr. R. 500; 46 Cal. 540, a Id. 221, 44 Iowa, 87, see 2 Conn. 389, but her testimony may be corroborated by her own prior statements—see Whart. Cr. Ev. § 253, 1 Whart. C. L. 8, h. ed. § 566.

265. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the State prison not less than two nor more than fourteen years.

Abduction for marriage.—Abduction for marriage by any sinister means, either by violence, deceit, conspiracy, or any corrupt or improper practices for the purpose of marriage, is an offense at common law—3 State Trl. 519, and physical force or violence is not essential—8 Iowa, 447, and consent extorted by threats, fraud, or otherwise, is no consent—20 Ill. 315, see 24 Tex. 133. If the female be under fifteen years of age, and without parents or legal guardian, those who have her under their care are deemed to have the legal custody of her. 4 Iowa, 447, Stat. 1871-2, 280.

266. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man, and every person who aids or assists in such inveiglement or enticement, and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man is punishable by imprisonment in the State prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [Approved March 30th, in effect July 1st, 1874.]

Abduction for purposes of prostitution.—The taking and detaining of an adult female, when she is not a prostitute, was not an offense at common law. 5 Barb. 108, 8 Barb. 602. The gist of the statutory offense is the carrying her away. 60 Ill. 214, 80 Cal. 238. The intent to prostitute her is not an essential part of the offense, or concealment—60 Ill. 214, 80 Cal. 238, and placing her in a house of ill-fame, or elsewhere, to be a prostitute—1. Met. 94. "Purpose of prostitution" means in this statute, an intent to procure with her—61 Ark. 100, 11 Ill. 8, Barb. 602, 8 Iowa 447, 6 Ind. 5, 8 C. 1 A. 100, R. 29, 64 Mo. 24, an intention to characterize for his own carnal enjoyment is not prostitution. 1 Car. & M. 234, it is a distinct offense—49 Cal. 11, 12 Met. 93, mere seduction will not amount to the

offense—49 Cal. 11; 80 Ill. 274, see 84 Mo. 24. A purpose of consubinage or of marriage will not be implied where the man is already married—6 Parker Cr. R. 129. Chaste character means personal virtue, chaste up to the commencement of the acts of defendant—8 Barb. 403, as distinguished from good repute—52 Ind. 476, 8 C. 1 Am. Cr. R. 28, 26 N. Y. 203, 33 Iowa, 88, 6 Ill. 321, 64. 430. The prosecution must allege and prove the chaste character of the female—49 Cal. 10, and *prima facie* proof, by presumption from other facts, is sufficient—49 Cal. 10.

Seduction. To seduce a female, is not an offense within section 266 of the Penal Code. This section refers to one who procures the gratification of the passion of lewdness in another—49 Cal. 11. Indecent liberties with females are acts classed as solicitations distinguishing seduction from rape—53 Cal. 62.

Adultery—Proof of notoriety is as material as proof of the fact of adultery—48 Cal. 52.

Adultery at common law.—Adultery is the illicit commerce of two persons of the opposite sex, one of whom at least is married—6 Ala. 604, 1 Ashm. 269, 2 Blackf. 318, 8 Cush. 478, 11 Ga. 53, 8 Gratt. 674, 2 Dall. 124, 59 Ill. 59, 8 C. 1 Green C. R. 635, 23 Iowa, 364, 43 Me. 258, 36 Md. 261, 2 Met. 190, 8 C. 2 Lead C. C. 29, 21 Pick. 609, 33 Pa. 81, 68; 9 N. H. 315, 1 Pin. (Wis.) 61, 56 Ind. 283, 1 Har. (Del.) 386, 4 Minn. 253. The definition varies with the local statutes—74 Conn. 667, 9 N. H. 515; N. C. Term. Rep. 365, which follow the common law—2 Bail. 149; 6 Rand. 52, 1d. 634, 16 Vt. 351, and 1 which follow the ecclesiastical law. See Desty's Crim. Law, § 88 a. The living together must be open and notorious—48 Cal. 52, 53 Ill. 64, 8 C. 1 Green C. R. 635, 56 Mo. 147, 42 Miss. 334, 1 Mont. 339, 8 C. 2 Am. Cr. R. 159. One act is not sufficient—46 Cal. 53, 14 Ala. 608, 13 Ill. 567, 38 Id. 60, 8 C. 1 Green C. R. 29 Ala. 534; 56 Mo. 147, 37 Tex. 346, 1 Pin. (Wis.) 641. See Desty's Crim. Law, § 88 b.

See "Act to punish Seduction," 1872, Appendix, p. 714, and "Act to punish Adultery," 1872, Appendix, p. 714.

267. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the State prison not exceeding five years, and a fine not exceeding one thousand dollars.

Abductions.—The child must be taken from some person having lawful charge of her—1 Russ. Cr. 9th ed. 940, and the taking must be without such person's consent—1 Car. & M. 234, 1 East P. C. 457, and want of consent will be presumed—see Rose Cr. Ev. 254. A person who takes a female under age from the custody of her father, must take the consequences, if she proves under age—2 Law R. 4 134, 8 C. 1 Am. Cr. R. 1, 30 Tex. C. C. 402, 1 Car. & K. 496, 12 Cox C. C. 23, 1d. 231, and 1 that he bona fide believed or had reason to believe she was over age is no defense—14 F. Cas. 603 34, 8 C. 1 Am. Cr. R. 1. It is enough if she be persuaded to leave her home and the control of the parents comes down to the time of the taking—4 Cox C. C. 44, 4 Id. 167, 3 Id. 44, and 1 though she quitted the house on a proposition emanating from herself, with a statement that she intended to leave, it is sufficient—2 Cox C. C. 279.

PEN. CODE.—H.

268. Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment in the State Prison for not more than five years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment. [Approved Feb. 15th, 1889.]

269 The intermarriage of the parties subsequent to the commission of the offense is a bar to a prosecution for a violation of the last section, *provided*, such marriage take place prior to the finding of an indictment or the filing of an information charging such offense [Approved Feb. 15th, 1889.]

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

§ 270. Omitting to provide child with necessaries.

§ 271. Deserting child.

§ 272. Disposing of child for mendicant business.

270. Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

Duty of parents.—A father is penally responsible for a neglect to supply food and clothing to his child—23 N. H. 355; 1 Den. C. C. 366; 3 Car. & P. 611, 4 Cox C. C. 455, 5 id. 275, 10 id. 569, 3 Car. & K. 123; but if a parent has no means to support his child, his omission to do so is not indictable—8 Q. B. 959, 10 Cox C. C. 569, 12 id. 16, 5 id. 339. The conscientious error of judgment in matters of medical treatment is not punishable at common law—10 Cox C. C. 530, so a conscientious conviction that one would heal a sick child may be a defense on negligence of parental duty—10 Cox C. C. 530. A mother is not criminally liable for neglect to provide a midwife for her daughter on confinement with a bastard child—9 Cox C. C. 123, unless there be a legal duty to supply one—9 Cox C. C. 123, 3 Aleyn 132, and she must have taken exclusive charge—9 Cox C. C. 123, 7 Car. & P. 277; 8 id. 611.

See Civil Code, §§ 193-215, acts relating to abandoned children 1874, Appendix p. 726; 1878 for protection of children, Appendix, p. 732; 1878, mendicant business Appendix, p. 733.

271. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the State prison not exceeding seven years, or in a county jail not exceeding one year.

At common law,—To desert a helpless child with intent to kill is murder—2 Camp 640; Car. & M. 184, 2 Car. & K. 864. 6 Cox C. C. 140, and manslaughter, if death ensues simply from the negligence. 4 Cox C. C. 455, 2 Car. & K. 864. Dears. 453, 5 Cox C. C. 339, 10 Id. 54, 10 Id. 569, 6 Id. 140, 2 Camp 640, and so of death from unjustifiable exposure to the weather—2 Car. & K. 794.

272. Any person, whether as parent, relative, guardian, employer or otherwise, having in his care, custody, or control any child under the age of sixteen years, who shall sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title, or pretense, for the vocation, use, occupation, calling, service, or purpose of singing, playing on musical instruments, rope walking, dancing, begging, or peddling, in any public street or highway, or in any mendicant or wandering business whatsoever, and any person who shall take, receive, hire, employ, use, or have in custody any child for such purposes, or either of them, is guilty of a misdemeanor [In effect March 3d, 1876.]

CHAPTER III.

ABORTIONS.

§ 274. Administering drugs, etc., with intent to produce miscarriage.

§ 275. Submitting to an attempt to produce miscarriage.

274. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the State prison not less than two nor more than five years.

Abortion.—The offense may be committed at any time during the period of gestation—1 Ohio St. 319; 49 Iowa, 260; and the moment the womb is instinct with embryo life gestation has begun—15 Gray, 187; 2 Mass. 387, 13 Pa. St. 631, 6 Pa. L. J. 29, see 2 Zab. 53. The offense is committed when a person gives medicine to a woman to procure an abortion, whether the drug was likely to produce the abortion or not—21 Minn. 238, see 2 Ind. 817, and it is not necessary that he be present when the medicine is taken—1 Dears. & B. 127.

Any unlawful use of any instrument for the purpose of procuring an abortion, is criminal—39 Cal. 400, 13 Allen, 534, 108 Mass. 481; the intent to commit an abortion must exist, when the means are used; 76 Ill. 217, 8 C. 1 Am. Cr. R. 29, the death of the woman is not a necessary ingredient, that of the child being sufficient to make the offense a felony—58 N. Y. 95, it only increases the degree of the crime and the punishment—Id. The evidence of the crime is usually drawn from the circumstances—78 Ill. 217, 8 C. 1 Am. Cr. R. 29, 40 Md. 633, 121 Mass. 81, 123 Ill. 242, 126 Id. 40, 12 Cox C. C. 463, 8 C. 1 Green C. R. 142, a person cannot be convicted on the uncorroborated testimony of the woman alone—39 Cal. 398.

Miscarriage.—Administering to a pregnant woman any drugs, or employing any means to produce a miscarriage, unless necessary to preserve life, is a criminal offense—41 Ind. 363, 2 Camp. 76. To constitute an administering it is not necessary that there should be a delivery by hand—4 Car. & P. 36, but there must be an actual swallowing of the drug—Ryan & M. 14, *contra*, 23 Minn. 238. Proof of the clandestine manner of administering would tend to prove the intent—56 N. Y. 628, the fact that the substance would not produce a miscarriage is no defense if he employed it with a criminal intent—49 Ind. 260, 23 Minn. 238, and an attempt is indictable though the woman was not pregnant at the time—32 Vt. 380, 2 Ohio St. 319, 11 Gray, 88. See Desty's Crim. Law, § 56 c.

275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the State prison not less than one nor more than five years.

See Act of 1880, relating to sale of poisonous substance, Appendix, p. 749.

CHAPTER IV.

CHILD STEALING.

§ 278. Definition and punishment of child stealing.

278. Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the State prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars.

CHAPTER V.

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

- § 281. Bigamy defined.
- § 282. Exceptions.
- § 283. Punishment of bigamy.
- § 284. Marrying a husband or wife of another.
- § 285. Incest.
- § 286. Crime against nature.
- § 287. Penetration sufficient to complete the crime.

281. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

Bigamy.—Bigamy is an offense against society—38 U. S. 145. Parties marrying under the legal age of consent, and cohabiting together after attaining legal age, can not marry again while the first marriage exists—30 Ohio, 1. Such marriage is only voidable—55 Ala. 108, *id.* 162; and if the minor refuses to consent on arriving at legal age, and ceases to cohabit afterward, such minor may marry again—13 Mich. 193. A marriage contracted through fear may, under some circumstances, be void—44 Ala. 24. A marriage in fact in a foreign jurisdiction is *prima facie* evidence of a valid marriage—54 N. H. 436, 8 C. 1 Am. Cr. R. 34. But if invalid where contracted, it is invalid here—31 Up. Can. Q. B. 182. Yet, a marriage which the law of the place may hold invalid, may, nevertheless, be deemed valid here—25 W. Va. 370, 21 Gratt. 500. So it may be held valid though not solemnized by an ordained minister—35 N. Y. 390. It is a civil contract, and does not require the intervention of a clergyman or a magistrate to make it legal—2 Cal. 503; see Civ. Code, § 55, and no particular form is required—2 Cal. 503. An agreement before witnesses, and subsequent cohabitation, is sufficient—25 N. Y. 390.

Second marriages. The gist of the offense is the entering into a void marriage while a valid one exists—35 N. Y. 390, 34 Mich. 339; 8 C. 1 Am. Cr. R. 72, 1 Car. & K. 144, it is an indispensable element—55 Ala. 108, 50 Md. 161, and must have been contracted in the State where the indictment is found—2 Parker Cr. R. 195, 1 Pak. 139, 8 *id.* 433, 113 Mass. 438, 44 Ala. 24, 50 Md. 161, but by statute, a contingency in a bigamous state is made indictable wherever a second marriage may have been solemnized—19 Vt. 570, 24 Ash. 533, 311 *ad.* 544, 12 Minn. 476, 4 Thomp. & C. 57, 2 Parker Cr. R. 197, 5 Hun, 297, but see 32 Ark. 205, 11 663, 55 Ala. 108. The offense is complete when the second marriage is complete, without proof of cohabitation—55 Ala. 108, 81 Pa. St. 428, 2 Ired. 346, although such marriage is invalid by reason of some legal disability of the parties—34 Mich. 339, 8 C. 1 Am. Cr. R. 72, 1 Car. & K. 144. *Id.* see 10 Cox Cr. C. 41, 11 474, as a marriage between a negro and a white person—34 Mich. 339, 8 C. 1 Am. Cr. R. 72. When one goes through the form of marriage, those aiding and assisting are accessories at the fact—1 Car. & K. 144; see 34 Ga. 275. Ignorance of law

or the advice of a magistrate will not excuse from responsibility—34 N. J. L. 125, 11 Blatchf. 200, 1d 374, 27 Mich. 191; 2 Met. 190, 8 A. R. 489, 87 Mass. 117, 94 116. Ignorance of law is no defense when the statute makes the act indictable irrespective of guilty knowledge—1 Mc. 30, 8 C. 1 Am. Cr. R. 42, and a party cannot avail himself of good faith on the act—1d. 98 U. S. 145, 1 Utah, 226, 13 Bush, 318; B. C. 2 Am. Cr. R. 163.

282. The last section does not extend—

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years, without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

Subd. 1. Absence—If the party knows the absentee beyond seas to be alive the act, though the statute will not relieve—38 Mass. 313, and see Allen 591, 13d 136, 7 C. & C. 375. Being in another State of the Union is equivalent to being beyond seas—3 Wheat. 541, 14 Peters. 141, 10 Pick. 555. Lawle, 373. See 34 Ga. 45, 50 Md. 161. In North Carolina a residence of seven years, without knowledge of his being alive is a defense—2 Ind. 346. In Massachusetts, the legality of the second marriage while the spouse is living does not depend on the ignorance of his being alive or on the honest belief of his death—Met. 472. In Pennsylvania any false facts, circumstances as to place, time, and mode of death, or appearance well founded, of the death of the other, absent for two years, is a defense—Whart. on Hom. 412.

Subd. 2. Divorce—If a divorce is such as to destroy the parties' titles to marry again, he cannot be convicted of bigamy—43 Mo. 138, 5 Barb. 117, 2 Clark & F. 96. To give validity to a divorce the complaint must at least in substance be made in the State where it is granted—5 Mich. 247, see 126 Mass. 34, 8 C. 2 Am. Cr. R. 63, 10 Mass. 26, 13 Gray, 30; 4 Allen 144, 1 Johns 44, 15 13 121, 45 N. Y. 530, 32 Ga. 653. So, if a party has in a State more to obtain a divorce, it is void—28 Ala. 12. In Massachusetts the guilty party cannot marry again—10 Mass. 34, 8 C. 2 Am. Cr. R. 63, 1 Pick. 136. He cannot marry a second wife & reside in the State—1 Pick. 136, 8 Id. 446, 10 Mass. 42. But he may marry out of the State unless he goes there to marry and evade the laws—111 Mass. 48, 3 Pick. 443. See 11 Ala. 570, 17 Pa. St. 246, 1 Verg. 110. 111 Mass. 48, 3 Pick. 443, 21d 701. If a decree be obtained before the second marriage it is a good defense, otherwise if obtained after the marriage—5 Barb. 117. An honest, not erroneous belief that a divorce has been granted is no defense—13 Bush, 318, 8 C. 2 Am. Cr. R. 163, 65 Me. 30. In Indiana, it is a good defense—41 Ind. 491. But see Allen 306.

283. Bigamy is punishable by fine not exceeding two thousand dollars, and by imprisonment in the State prison not exceeding three years.

284. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the pro-

visions of this chapter, is punishable by fine not less than two thousand dollars, or by imprisonment in the State prison not exceeding three years.

285. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the State prison not exceeding ten years.

Incest.—Incest is a statutory offense—14 Cal 130, 1 Morris, 326; 2 Met. 103, 11 Ohio St. 325, 11 Ga. 53. It is a joint offense—49 Ind. 544; 8 C. 1 Am. Cr. R. 334. And the *lex fori* arbitrates as to the relationship—Whart. Conf. of L. § 136. In Iowa, intermarriage within the prohibited degrees is incest, without carnal knowledge—34 Iowa, 547. In Ohio, *emissio seminis* was once essential—22 Ohio St. 541, 8 C. 1 Green C. R. 662, but elsewhere it was held not necessary—34 Iowa, 547. A bare cohabitation is not indictable—8 Ill. 261, 8 C. 2 Am. Cr. R. 329, 54 Pa. St. 305, 29 Mass. 418. In California, the attempt must be manifested by acts which would end in consummation, but for the intervention of circumstances independent of the will of the party—14 Cal. 130. But sending for a magistrate is not an attempt to contract an incestuous marriage—14 Cal. 130.

Prohibited degrees.—Carnal intercourse with a daughter is incest—11 Ga. 53, and the offense may be committed with a natural as well as a legitimate daughter—11 Ala. 289, 39 Id. 231. It is not incest for a man to cohabit with his stepdaughter—47 Miss. 274. The relation of step-daughter and step-father, ceases to exist on its termination by death or divorce—22 Ohio St. 541, 8 C. 1 Green C. R. 662. Brother and sister mean the offspring of the same parents, they do not necessarily imply legitimacy of birth—34 Iowa, 547. See Besty's Crim. Law, § 55 n. See Civ. Code, § 58.

286. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the State prison not less than five years.

Crime against nature.—Sodomy is the carnal knowledge committed against the order of nature by man with man, or by man with woman in an unnatural manner, or by man or woman with a beast—5 Parker Cr. R. 260. Consent or non-consent is immaterial—8 Car. & P. 604, 3 Cox & C. 270, the party consenting being a accomplice—11 Miss. 411. See Rose Cr. R. 44, where consent is denied. For fourteen—1 Denio 864, Law R. 2 C. C. 12. It is sexual connection *per anum*—Russ. & R. C. C. 331, see 1 Va. Cas. 307, with mankind or beast, but not with a cow—2 Whart. C. L. 61 (ed. 1867). Attempts and assaults to commit the offense are indictable—3 Q. B. 190, 1 Moody C. C. 24, Law R. 2 C. C. 12, 8 Car. & P. 417.

287. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

Penetration is essential to the offense—Russ. & R. C. C. 331; see 8 Car. & P. 604, and without emission it is sufficient—1 Va. Cas. 307; 3 Har. & J. 154.

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

- § 290. Unlawful mutilation or removal of dead bodies.
- § 291. Unlawful removal of dead body from grave for dissection, etc.
- § 292. Who are charged with the duty of burial.
- § 293. Punishment for omitting to bury.
- § 294. Who are entitled to custody of a body.
- § 295. Arresting or attaching a dead body.
- § 296. Defacing tombs and monuments.
- § 297. Unlawful interments.

290. Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment.

Violation of sepulture.—It is a crime at common law to wantonly or illegally disturb a corpse—8 Pick. 376, 19 Id. 304, 10 Id. 37, 1 Leach, 497; Russ. & R. C. C. 35, 7 Cox C. C. 214, or to remove one—7 Cox C. C. 214. It is not necessary that all engaged should be actually present, provided they are near enough to render assistance—6 Blackf. 116. The wife loses all control over the body of her husband after its burial—42 Pa. St. 293.

291. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it, without authority of law, or from malice or wantonness, is punishable by imprisonment in the State prison not exceeding five years.

Body-snatching.—It is a crime to dig up and remove a dead body for gain or for dissection—4 Blackf. 328, 19 Pick. 304; 10 Id. 37, Dowl. & R. 13, 1 Leach, 497; 8 Cox C. C. 18, or to sell a dead body for dissection—8 Cox C. C. 18.

292. The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married woman, the duty of burial devolves upon her husband.

2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this State, and possessed of sufficient means to defray the necessary expenses.

3. If the deceased left no husband nor kindred answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or if there is no tenant, upon the owner of the premises, or master, or if there is no master upon the owner, of the vessel in which the death occurs or the body is found.

Duty of burial. At common law, it is a misdemeanor for one, whose duty it is to have a dead body buried, to refuse or neglect to bury it—1 Me. 226, if he have sufficient means to do so—3 Cox C. C. 379; 3 Denison, 325, or to prevent the burial—Willes, 537, or to willfully obstruct and interrupt the burial service—4 Barn. & C. 902, 2 Strange, 989, or to bury a body of one who died a violent death before or without a coroner's inquest—1 Salk. 377; 7 Mod. 16; or to throw a dead body into a river without the rites of a christian burial—1 Me. 226. A statute which empowers boards of health to regulate burial-grounds and interments, includes the removal of dead bodies—13 Allen, 546. The statute applies only to burial-places dedicated in the mode pointed out by statute—2 Ind. 172.

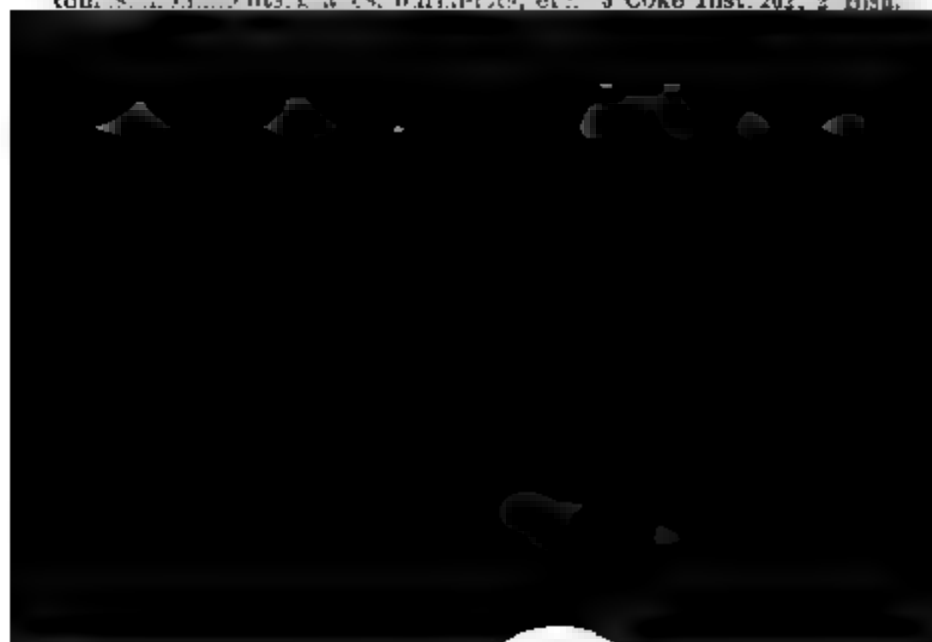
293. Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

294. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.

295. Every person who arrests or attaches any dead body of a human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

296. Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.

Violation of sepulcher. It is an offense at common law to deface tombs, monuments, &c., burial-places, &c. 3 Coke Inst. 202, 2 Bush.

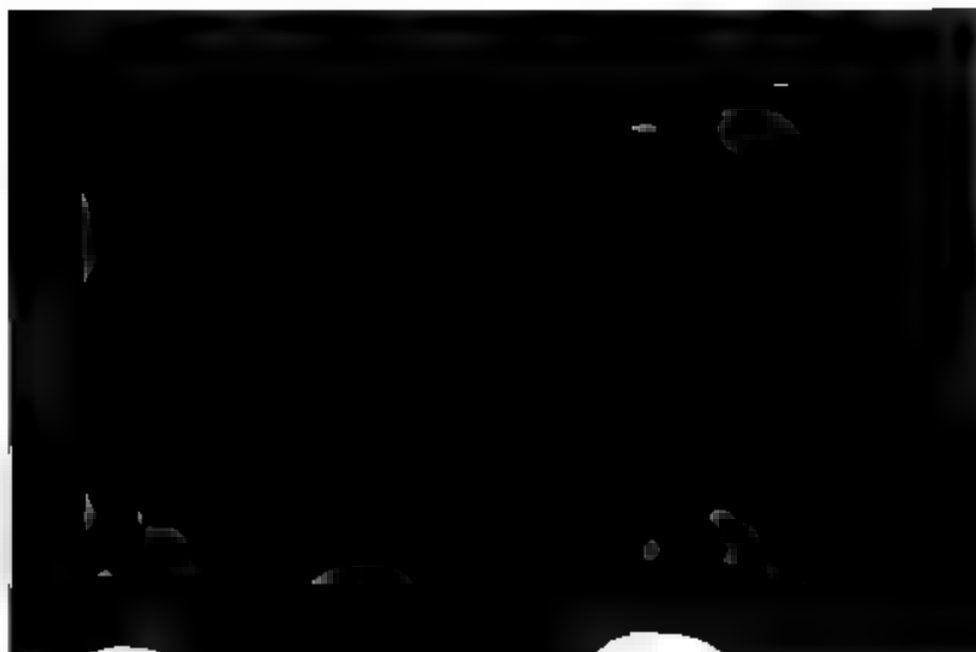


CHAPTER VII.

OF CRIMES AGAINST RELIGION AND CONSCIENCE, AND OTHER OFFENSES AGAINST GOOD MORALS.

- § 299. Sunday amusements, where liquors are sold. Repealed.
- § 300. Keeping open places of business on Sunday. Repealed.
- § 301. Limitation on operation of preceding section. Repealed.
- § 302. Disturbing religious meetings.
- § 303. Sale of liquors at theaters, and employing women to sell liquors thereat.
- § 304. Selling liquors at camp-meeting.
- § 305. Limitation of preceding section.
- § 306. Females exhibited in public places.
- § 307. Keeping or resorting to place where opium is used.
- § 309. Admission of minor to place of prostitution.

299. Relating to Sunday exhibitions and amusements, was repealed by act approved and in effect February 8th, 1883.



S. C. 2 Am. Cr. R. 133. So a Sunday-school is a religious meeting—6 Bart. (Tenn.) 234; or a singing-school for instruction in sacred music—26 Cal. 807; 28 id. 272. There must be an actual disturbance, by noise, or rude and indecent conduct at or near the place of worship—37 Ala. 154, 48 id. 175. So disturbing a congregation, though not in a church, chapel, or meeting house, constitutes the offense—4 Dev. & B. 338; as a disturbance made on a camp-ground—3 Gratt. 624, *contra*, 32 Mo. 548, and see 29 Alb. L. J. 124, but not when the exercises are over—3 Fred. 111. It is sufficient if the disturbance occur a reasonable time before the dispersing of the congregation—38 Ala. 234, 53 id. 398; 3 Sneed, 33, 5 id. 518. It depends on usage and practice—53 A.A. 398; 1 Gray, 46; 53 Me. 125; 1 Craw. & D. 157; and is a question of fact for the jury—4 Ind. 429; 19 id. 181, 28 Conn. 232. See Deady's Crim. Law, § 93 b.

303. Every person who sells or furnishes any malt, vinous, or spirituous liquors to any person in the auditorium or lobbies of any theater, melodeon, museum, circus, or caravan, or place where any farce, comedy, tragedy, ballet, opera, or play is being performed, or any exhibition of dancing, juggling, wax-work figures and the like is being given for public amusement, and every person who employs or procures, or causes to be employed or procured, any female to sell or furnish any malt, vinous, or spirituous liquors at such place, is guilty of a misde-

Constitutional law—Legislative enactments or municipal ordinances "to prohibit noisy amusements and to prevent immorality," are not repugnant to the Constitution of the United States or of the State of California—58 Cal. 402. See 42 Cal. 480.

Sale of liquors to minors, Act of 1872, Appendix, p. 716; on election days, Act of 1874 Appendix, p. 717, at State Capitol, Act of 1880, Appendix, p. 746. Intoxication of officers, Act of 1880, Appendix, p. 746.

304. Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous or intoxicating liquors, or any drink of which wines, spirituous or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars.

305. The provisions of the preceding section do not apply to any person carrying on a regular business in

the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section.

306. Every person who causes, procures, or employs any female for hire, drink, or gain, to play upon any musical instrument, or to dance, promenade, or otherwise exhibit herself, in any drinking saloon, dance-hall, ball-room, public garden, public highway, common, park, or street, or in any ship, steamboat, or railroad car, or in any place whatsoever, if in such place there is connected therewith the sale or use, as a beverage, of any intoxicating, spirituous, vinous, or malt liquors; or who shall allow the same in any premises under his control, where intoxicating, spirituous, vinous, or malt liquors are sold or used, when two or more persons are present, is punishable by a fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and every female so playing upon any musical instrument, or dancing, promenading, or exhibiting herself, as herein aforesaid, is punishable by a fine not exceeding one hundred dollars, or by imprison-

person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein, or any parent or guardian of any such minor who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house or room, shall be guilty of a misdemeanor. [In effect April 12th, 1880.]

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND
PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

- § 311. Indecent exposures, exhibitions, and pictures.
- § 312. Seizure of indecent articles authorized.
- § 313. Their character to be summarily determined.
- § 314. Their destruction.
- § 315. Keeping or residing in a house of ill-fame.
- § 316. Keeping disorderly houses.
- § 317. Advertising to produce miscarriage.
- § 318. Enticing to place of gambling or prostitution.

311. Every person who willfully and lewdly, either:

1. Exposes his person or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,
2. Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibi-

misdeemeanor. [Approved March 30th, in effect, July 1st, 1874.]

Indecent exposure.—Any public exhibition, which outrages decency, shocks humanity, or is contrary to good morals—3 Day, 103; 32 Mo. 560, 50 Ill. 21; 13 Vt. 574. It is enough if it be exposed to public view in a public place—1 Dev. & H. 208, or that it is so as to render it probable that it could be seen by the public—Leigh & C. 103, and it does not depend on the number of persons to whom the exposure is made—18 Vt. 574.

Subd. 1. Exposure of person.—The indecent exposure of one's person, or the person of another, is a criminal offense—3 Barb. 261, 1 Dev. & H. 208, 3 Humph. 201, 32 Mo. 560, 4 Ill. 136, 1 Dev. C. C. 328; 12 Cox C. C. 1, 13 Id. 16. It is such an intentional exposure of the naked body in a public place as is calculated to shock the feelings of chastity or to corrupt the morals—3 Ill. 103, 32 Mo. 560; 10 St. Trl. App. 3, 1 Sta. 13, 1 K. 369, or such as is calculated to excite lascivious desires—58 Ind. 328. The exposure must not be accidental—3 Barb. 261, and the essence of the offense is that it be in a public place—43 Tex. 346, 10 Ill. 538, 3 Cox C. C. 218, 3 Car. & K. 360, Leigh & C. 326, Law R. 1 C. C. 282, and in sight of others—4 N. C. 25, 10 Ark. 156, 2 Ariz. 72, 28 Mo. 560, 32 Id. 560. A person in the market-place in a public place—8 Conn. 375, or a public path, or highway—32 Mo. 560, 11 Cox C. C. 65; 2 Camp. 86, or a sea-beach visible from inhabited houses—2 Camp. 89.

Subd. 3. Obscene publications.—Any immodest or immoral publication, tending to corrupt the mind and to destroy the love of decency, morality, and good order, is punishable as a misdemeanor—17 Mass. 336, 2 Berg. & R. 91, 1 Swan 42, and 3 Ark. 454, 25 Mo. 3, 13 Pa. St. 412, such as obscene books—1 Blatchf. 346, 2 Berg. & R. 11, 17 Mass. 336, 1 Strange, 188, 11 Cox C. C. 16, 4 Post. & F. 73, or prints—2 Berg. & R. 91, 1 Fl. & B. 435, 4 Post. & F. 73, or pamphlets—Law R. 3 Q. B. 369, pictures—39 Ill. 441, 3 Day, 103, 1 Swan 42, 1 Vt. 674; or writings—1 Blk. 500, 8 Phila. 453, 4 Post. & F. 73. It has been decided that the exhibition of obscene prints need not be in public—2 Berg. & R. 91. The circulation of obscene books through the mail is prohibited by Congress—11 Blatchf. 346. See Rev. Stat. U. S. § 3518.

Subd. 5. Obscene songs. Two persons may be jointly indicted for singing an obscene song in public—2 Burr. 380.

312. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

313. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed

or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

314. Upon the conviction of the accused, such district attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

315. Every person who keeps a house of ill-fame in this State, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor.

House of ill-fame—A house of ill-fame is a house of prostitution—Law R. 1 C. C. 21; kept for the resort and the unlawful commerce of lewd people of both sexes—33 Conn. 92, 5 Ired. 603, 17 Pick. 80. It must be the resort of other women than its keeper, when the keeper is a woman—12 Allen, 177, 17 Conn. 467, 31 Id. 61; 40 N. H. 61. The gist of the offense is, that it is kept for lewd purposes, and resorted to for lewdness—64 Me. 523, 8 C. 1 Am. Cr. R. 351; and if lewdness is carried on privately, it is sufficient—51 Ga. 390. There need be no outward indecency—42 Tex. 496, 8 C. 1 Am. Cr. R. 350, nor disorder—Law R. 1 C. C. 21. See Deady's Crim. Law, § 108 a.

Liability of parties—The penalty is designed for keepers, who may be prosecuted by indictment—12 Ala. 177, 53 Id. 277, 111 Mass. 47, 14 Id. 26, 7 Gray, 324, 1 Met. 151, 17 Pick. 80, 1 Mo. 27, 4 Denio, 129, 4 Cranch 104, 34, 17 Conn. 467, 6 H. Mon. 21, 6 H. Mon. 59, 10 Id. 137, 5 Ired. 603, 19 Mod. 63, Law R. 1 C. C. 21. Every one in any way concerned in the keeping is liable either as principal or aiding and assisting—11 Bush 61, 1 Allen 7. A landlord and wife may be jointly or severally convicted—7 Mass. 253, 4 Met. 111, 114 Mass. 281, 11 Mo. 27; 11 Bush, 610. In certain States the owner of the house rented for this purpose is liable—see Deady's Crim. Law, § 108 b.

316. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner, and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misde-

meanor. [Approved March 30th, in effect July 1st, 1874.]

Disorderly house.—A disorderly house is one kept in such a way as to disturb, annoy, or scandalize the public generally, or the neighbors and passers-by—3 Ind 44, 49 Me 534, 19 Mass. 356, 14 Mo. 112, 21 N. H. 441, 2 Serg. & R. 298, 42 Cal. 32, 5 Har. (Del.) 508, or for the purpose of being a resort for thieves, breakers, or other idle and vicious people—36 N. J. L. 167, 39 Ind. 463, 2 Tex. Ct. App. 82, 14 Wis. 112, and the offense of keeping need not be *in causa*.—20 N. S. 162, 18 Vt. 70; 97 Mass. 75, 25 Iowa, 235. It is sufficient if the disorder be frequent, and it is not necessary that all persons residing near or passing it, are annoyed. 1 Allen 291. Facts must be such as tend to annoy good citizens, and do in fact annoy such as are present. 100 Mass. 29, 6 Cal. 80, by unusual noises. 30 Cal. 290, 41 Ark. Cr. It. 234. The keeper is liable if the house be kept in a disorderly manner—38 Ind. 5; and that the disorder was excessive within and was not heard outside, is immaterial if it disturbs those who have a right to access. 2 Dev. & B. 44, 25 Iowa, 235, 5 Cranch C. C. 304, Law R. 10 C. C. 21. The keeper of a tippling house is liable if it be kept in a disorderly manner. 11 Nev. 44, 81 N. 207, but the house must be kept by him, or he must hold himself out as or act as keeper.—1 Cranch C. C. 202, 1d 345, 6 Mo. 364, 1d 365, 22 34, 4 Id. 597, Bush. L. 25, 8 Blackf. 95, 1d 260; 6 Id. 44, 6 B. Mon. 21, 4 Har. Del., 5/2, 1 Bask. 45. And a license will not protect him. 4 Cranch C. C. 501, 5 Har. (Del.) 508, 45 Ind. 333, 4 Id. 264. See Desty's Crim. Law, § 106 a, b.

317. Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony. [Approved March 30th, in effect July 1st, 1874.]

318. Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of gambling or prostitution, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars, or be punished by both such fine and imprisonment. [In effect April 16th, 1880.]

294. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.

295. Every person who arrests or attaches any dead body of a human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

296. Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.

Violation of sepulcher. —It is an offense at common law to deface tombs, monuments, graves, burial-places, etc.—3 Coke Inst. 207; 2 Bish. C. L. 6th ed. § 1183. If a place has once acquired the character of a cemetery, it does not cease to have it by mere disuse—7 Allen, 294. See Pol. Code, §§ 3074-3081.

297. Every person who shall bury or inter, or cause to be buried or interred, the dead body of any human being, or any human remains, in any place within the corporate limits of any city or town in this State, or within the corporate limits of the city and county of San Francisco, except in a cemetery, or place of burial, now existing under the laws of this State, and in which interments have been made, or that is now or may hereafter be established or organized by the board of supervisors of the county or city and county, in which such city or town, or city and county, is situate, shall be guilty of a misdemeanor. [In effect March 30th, 1874.]

drawn within this State or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency, dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

Insuring tickets.—A guaranty, binding the guarantor to pay the prize, is a lottery ticket, though not in the form of one—3 Raud. 715.

325. All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the State, and may be recovered by information filed, or by an action brought by the attorney-general, or by any district attorney, in the name of the State. Upon the filing of the information or complaint, the clerk of the court, or if the suit be in a justice's court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner, as attachments issued from the district courts in civil cases.

326. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

Lottery offices.—In New York, it is not an indictable offense to keep a room for the sale of lottery tickets—3 Denio, 191.

CHAPTER X.

GAMING.

- § 330. Gaming prohibited. Penalty.
- § 331. Permitting gambling in houses owned or rented.
- § 332. Winning at play by fraudulent means.
- § 333. Witnesses neglecting or refusing to attend trial.
- § 334. Witness privilege.
- § 335. Duties of district attorneys, sheriffs, and others.
- § 336. Permitting minor to play in saloon.
- § 337. Pretending to give authority to conduct games.

330. Every person who deals, plays or carries on, opens or causes to be opened, or who conducts either as owner or employé, whether for lure or not, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, *tan*, *fan-tan*, *stud-horse poker*, *seven and a half*, *twenty-one*, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or any other representative of value, is punishable by fine of not less than two hundred nor more than one thousand dollars, and shall be imprisoned in the county jail until such fine and costs of prosecution are paid, such imprisonment not to exceed one year, and every person who plays or bets at or against any of said prohibited game or games, is guilty of a misdemeanor. [Approved March 14th, 1885]

Statutory offense. The substance of the statutory offense is to deal a game for money. 14 Cal 30. The statute in relation to gambling is constitutive. 4 Cal 571. It must be construed with the general act concerning criminal proceedings and where a fine is imposed for conviction, it may be imposed to enforce its payment. 74 Cal 204. A statute forbidding the granting of a license to keep a gambling-house affords protection only against a criminal prosecution. 14 Cal 441. It does not legalize gambling contracts which are void at our common law. 10 Cal 441, 211 81, 311 44, 43 82, but it does give force to a gambling contract made in violation of the law. 14 Cal 441. 21 Cal 441, 43 82. This section does not apply to one who merely bets at the game, such a person is not necessary to the crime of gambling. 53 Cal 35. The offense is a misdemeanor punishable by fine and imprisonment till the fine is paid. 4 Cal 128, as at common law. 2 Blackf 251. See Besty's Crim. Law, § 101, a. As to prohibited games, see id. § 101 b.

Offense at common law.—An agreement between two or more persons to risk their money or property in a contest of chance of any kind, where one may be winner and the other loser is gambling at common law. 5 Smed. 50, 3 Hensh 488, 8 C. & P. Greenl. R. 323, see 1 Melga, 29, 1 Humph, 48, and is an indictable offense—1 Cranch C. C.

PEN. CODE. 13.

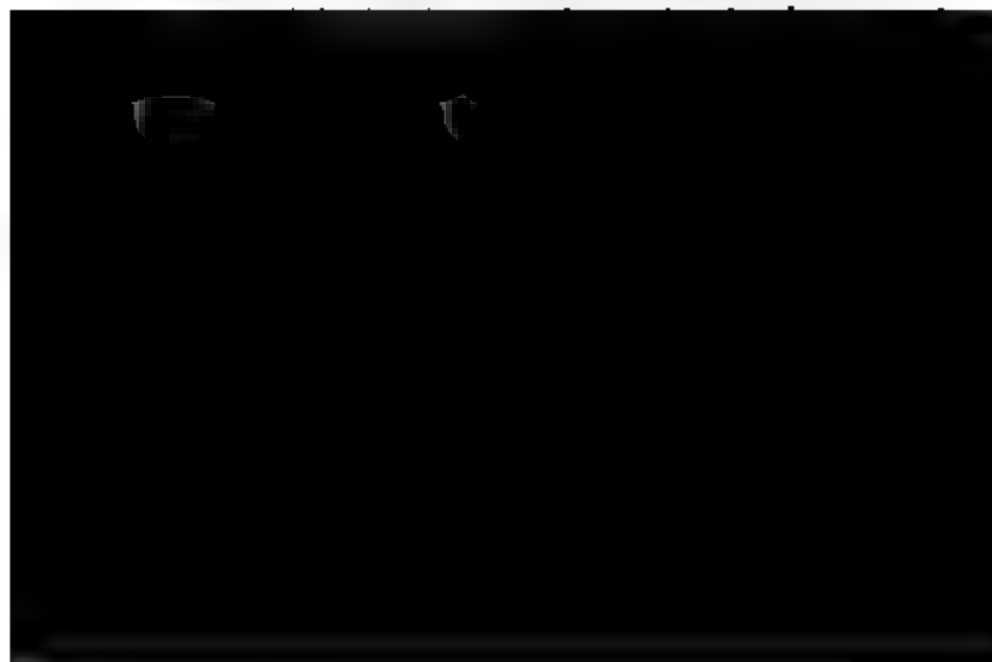
451; 1 id. 146; 3 id. 43; id. 52. Single acts constitute the offense—11 R. 1. 417; 13 Mo. 444; 15 Ala. 203; 20 id. 36; 1 Ohio St. 91; and consecutive games at one sitting constitute one offense—13 Ga. 396; 20 id. 124. The gist of the offense is the obtaining of property of another by the fraudulent use of cards or other devices—74 Ill. 364; and the publicity of the act—41 Ala. 22. See 14 Gray, 240, id. 24.

Betting.—A bet is a wager, and the bet is complete when the offer to bet is complete, although the stake has neither lost nor won—7 Port. 441. To constitute a wager, both parties must incur a risk—3 Humph. 451. In California, one who bets at faro is not accessory to the crime of gaming—51 Cal. 247; and see 22 Ala. 14. As to the statutes of other States—see Dasty's Crim. Law § 101 c, *et seq.* Wagers affecting third persons or the public peace, morals, or public policy, at common law are not recoverable—4 Cal. 359, 37 id. 670, 37 id. 168, 43 id. 614; but they may be disaffirmed before the result is known, and the money in hands of a stakeholder be recovered—37 Cal. 678. See Dasty's Crim. Law, §§ 79 g, 101 c. Betting at races—see id. § 101 d.

331. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

Liability.—The owners are liable only when the gaming is done with their knowledge—7 Cal. 262. See Dasty's Crim. Law, § 100 c.

332. Every person who, by the game of "three-card monte" so-called, or any other game, device, sleight of hand, pretensions to fortune-telling, trick, or other means whatever, by use of cards or other implements or instru-



inate himself; but no prosecution can afterwards be had against him for any offense concerning which he testified.

335. Every district attorney, sheriff, constable, or police officer must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting so to do, is guilty of a misdemeanor.

336. Every owner or lessee, or keeper of any house used in whole, or in part as a saloon or drinking-place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor. [Approved March 24th, 1874.]

337. Every State, county, city, city and county, town, or township officer, or other person who shall ask for, receive, or collect any money, or other valuable consideration, either for his own or the public use, for and with the understanding that he will aid, exempt, or otherwise assist any person from arrest or conviction for a violation of section three hundred and thirty of the Penal Code, or who shall issue, deliver, or cause to be given or delivered to any person or persons any license, permit, or other privilege, giving or pretending to give any authority or right to any person or persons to carry on, conduct, open, or cause to be opened, any game or games which are forbidden or prohibited by section three hundred and thirty of said Code, and any of such officer or officers who shall vote for the passage of any ordinance or by-law, giving, granting, or pretending to give or grant to any person or persons any authority or privilege to open, carry on, conduct, or cause to be opened, carried on, or conducted, any game or games prohibited by said section three hundred and thirty of the Penal Code, is guilty of a felony. [Approved March 12th, 1885.]

CHAPTER XI.

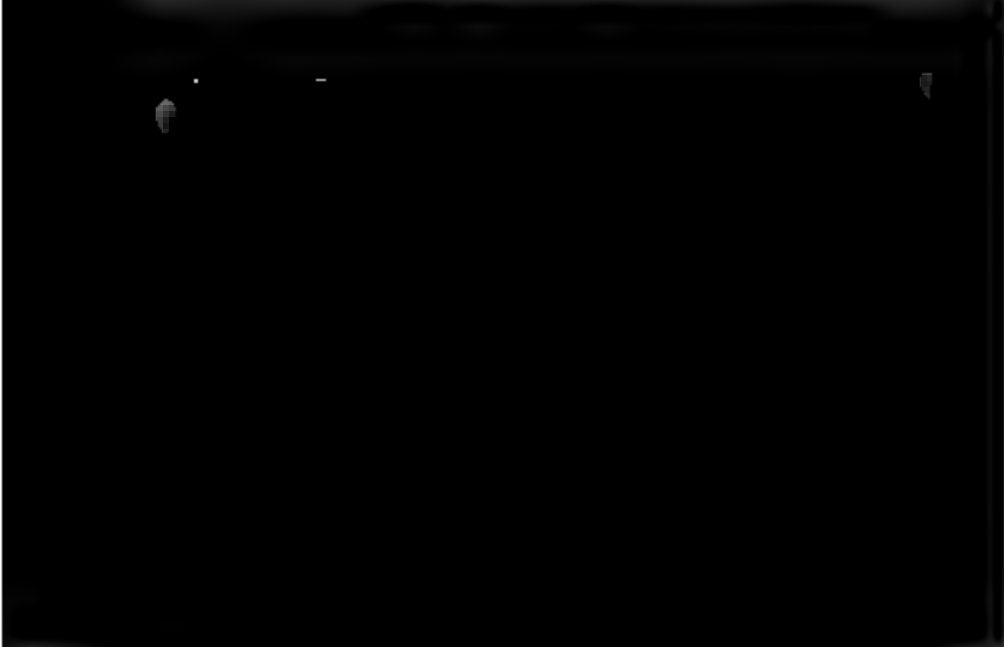
PAWNBROKERS.

- § 338. Pawnbroking without license.
- § 339. Failing to keep a register.
- § 340. Charging unlawful rate of interest.
- § 341. Selling before time of redemption has expired, or without notice.
- § 342. Refusing to disclose particulars of sale.
- § 343. Refusing to allow an officer with search-warrant to inspect register of pledged articles.

338. Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent. per annum, except by authority of a license, is guilty of a misdemeanor.

Constitutional law.—The Code provision limiting the rate of interest which may be charged on loans, is not repugnant to art. I, § 7 of the State Constitution—29 Cal. 271. See § 501, *post*, and see Civ. Code, §§ 2086-3011.

239. Every person who carries on the business of a



341. Every pawnbroker who sells any article pledged to him and unredeemed, until it has remained in his possession six months after the last day fixed by contract for redemption, or who makes any sale without publishing in a newspaper printed in the city, town, or county, at least five days before such sale, a notice containing a list of the articles to be sold, and specifying the time and place of sale, is guilty of a misdemeanor.

342. Every pawnbroker who wilfully refuses to disclose to the pledgor or his agent the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, or who, after deducting from the proceeds of any sale the amount of the loan and interest due thereon, and four per cent on the loan for expenses of sale, refuses, on demand, to pay the balance to the pledgor or his agent, is guilty of a misdemeanor.

See § 502, *post*.

343. Every pawnbroker who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor.

See § 502, *post*.

CHAPTER XII.

OTHER INJURIES TO PERSONS.

- § 346. Acts of intoxicated physicians.
- § 347. Willfully poisoning food, medicine, or water.
- § 348. Mismanagement of steamboats.
- § 349. Mismanagement of steam-boilers.
- § 350. Counterfeiting trade-marks.
- § 351. Selling goods which bear counterfeit trade-marks.
- § 352. Definition of the phrase "counterfeited trade-marks," etc.
- § 353. "Trade-mark" defined.
- § 354. Refilling casks, etc., bearing trade-mark.
- § 355. Defacing marks upon wrecked property and destroying bills of lading.
- § 356. Defacing marks upon logs, lumber, or wood.
- § 357. Altering brands.
- § 358. Frauds in affairs of special partnership.
- § 359. Contracting or solemnizing incestuous or forbidden marriages.
- § 360. Making false return or record of marriage.
- § 361. Cruel treatment of lunatics, etc.
- § 362. Refusing to issue or obey writ of habeas corpus.

and every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the State prison for a term not less than one nor more than ten years.

Public health. Crimes against public health are those by which the physical health of the people at large is endangered or impaired, as polluting streams—6 Ral. 176, or fountains—8 N. H. 203, 37 Ala. 123, or rendering water unwholesome for consumption or use—8 N. H. 203; 6 Cal. & P. 297, 41 Cal. Q. B. 183. Any act or omission which is liable to generate disease or communicate infections are punishable offenses—3 H. L. 40, 35 Iowa 51, 8 N. H. 203, 3 Ral. 438, 8 Cal. Green C. R. 503, 15 Wend. 37, 41 Cal. Q. B. 198. See Desty's Crim. Law, § 115 n.

Unwholesome provisions.—Selling, exposing for sale, or giving away food rendered unwholesome by admixture of noxious substances is an indictable offense—3 Hawks 378, 3 Post. & F. 166, or exposing for sale any article unfit for human food—3 Hawks, 378, 1 Head. 160, or injurious to health—2 Fre. 46, 34 N. Y. 83, 3 Parker Cr. R. 627, S. C. 19 N. Y. 574. See Desty's Crim. Law, § 115 n.

348. Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of exceeding any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a felony. [Approved March 30th, in effect July 1st, 1874.]

Criminal negligence.—Gross carelessness resulting in injury to others is criminal even if the act done be lawful. Alth. 208, 6 B. Mon. 176, 11 Hunt. 416, 4 Mason 565, 4 Cal. & P. 398, 31 L. 629, 113 499, and act of omission, as well as an act of commission, may be criminal—2 Post. of 578, 5 McLean, 127, 4 Cox C. C. 449, 4 Cal. & P. 123, 1 Cox C. C. 32, 4 Cal. & P. 308, 4 Post. & F. 504, as the effect of a steamboat, through whose negligence an explosion takes place—5 McLean, 42. See Desty's Crim. Law, § 74. See post, notes to §§ 349, 350.

349. Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who willfully, or from ignorance, or gross neglect, creates, or allows to be created such an undue quantity of steam as to burst or break the boiler, or engine, or apparatus, or cause

other accident whereby human life is endangered, is guilty of a felony. [Approved March 30th; in effect July 1st, 1874.]

As to personal injuries, see Civ. Code, §§ 43, 1708, 1714, 1838, and 2194.

350. Every person who willfully forges or counterfeits, or procures to be forged or counterfeited, any trade-mark usually affixed by any person to his goods, which has been duly recorded in the office of the Secretary of State, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed, or intended to be affixed, as the goods of such person, is guilty of a misdemeanor. [Approved March 10, 1885.]

See Trade-marks, Civ. Code, §§ 83a, 991; and Pol. Code, §§ 3198-3199.

351. Every person who sells or keeps for sale, any goods upon or to which any counterfeited trade-mark has been affixed, after such trade-mark has been recorded in the office of the Secretary of State, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor. [Approved March 10, 1885.]



354. Every person who has, or uses, any cask, bottle, vessel, case, cover, label, or other thing bearing or having in any way connected with it the duly filed trade-mark or name of another, for the purpose of disposing, with intent to deceive or defraud, of any article other than that which such cask, bottle, vessel, case, cover, label or other thing originally contained, or was connected with, by the owner of such trade-mark or name, is guilty of a misdemeanor.

See §§ 349, 350, 351.

355. Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading, or other document tending to show the ownership, is guilty of a misdemeanor.

See Pol. Code, §§ 2403-2418.

356. Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

See Pol. Code, §§ 2380-2393.

357 Every person who marks or brands, alters, or defaces the mark or brand of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat, or pig, belonging to another, with intent thereby to steal the same, or to prevent identification thereof by the true owner, is punishable by imprisonment in the State prison for not less than one nor more than five years.

See Pol. Code, §§ 3167-3172, 3182-3185.

358. Every member of a special partnership, who commits any fraud in the affairs of the partnership, is guilty of a misdemeanor.

See Civ. Code, § 2477.

359 Every person authorized to solemnize marriage, who wilfully and knowingly solemnizes any incestuous

or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both.

See Civ. Code, § 59. Authority to solemnize marriage—Id. § 79. See Incest, ante, § 265.

360. Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage to the recorder, and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section.

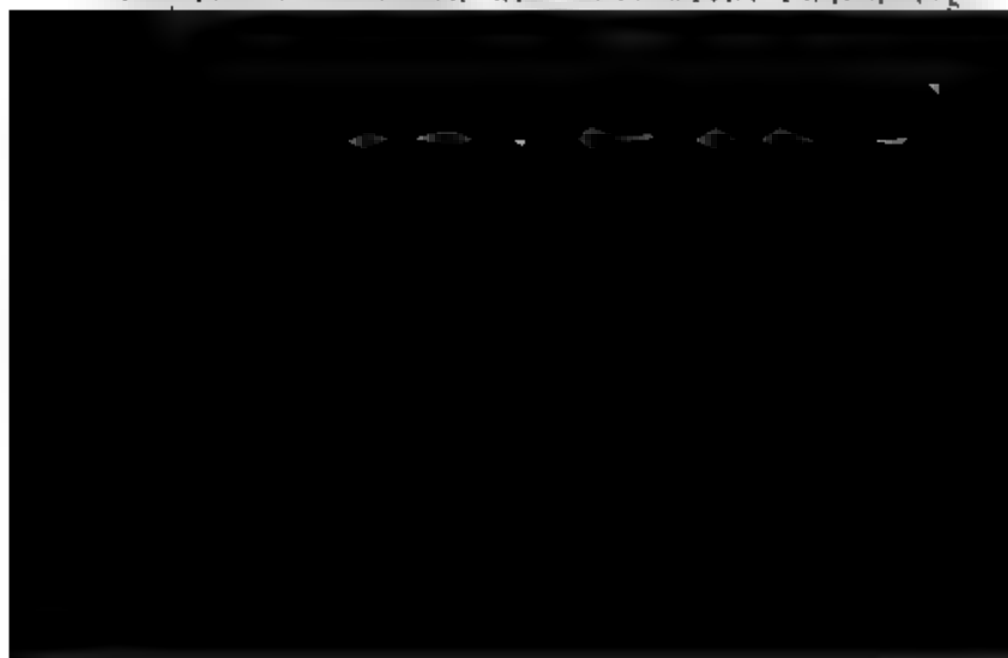
See Civ. Code, §§ 72, 74, 76.

361. Every person guilty of any harsh, cruel, or unkind treatment of, or any neglect of duty towards, any idiot, lunatic, or insane person, is guilty of a misdemeanor.

Public duty.—Wherever a party owes the public a duty, he is indictable for breach of that duty—37 Ala. 123. So, exposing helpless persons to physical danger, by those having them in charge, is indictable—Russ. & R. C. C. 20; 10 Cox C. C. 569, Law R. 1 C. C. 211; id. 222; Deans. 451, 9 Cox C. C. 123. A guardian, master, or keeper of an asylum, is indictable for negligence where injury results—77 N. C. 494; Russ & R. C. C. 20, 10 48, 4 Cox C. C. 455; 8 id. 449; 10 id. 62; 3 Car. & P. 425. See Desty's Crim. Law, § 87 a.

362. Every officer or person to whom a writ of habeas

corpus is issued, who neglects to give service thereof, is



or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

See Habeas Corpus, *post*, §§ 1473, *et seq*

365. Every person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

Neglect of duty.—An innkeeper, having room in his house, who refuses to receive a visitor who tenders a reasonable price for entertainment is indictable at common law—4 Har. (Del.) 32, 2 Dev. & B. 424; 12 Mod. 445, 1 Car. & P. 23; 8 Mees. & W. 269, 13 Cox & C. 379. So, if having received a guest he refuses to find food and lodging for him—1 Hawk P. C. 714, but the person applying must be a traveler—12 Mod. 445. See Civ. Code, §§ 1859, 1860.

366 Every person who counterfeits, or who willfully uses the counterfeited seal or stamp of any person engaged in manufacturing or selling quicksilver, is guilty of a felony


See *ante*, §§ 349, 350.

367. Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver, is guilty of a misdemeanor.

See *ante*, §§ 349, 350.

TITLE X.

Of Crimes against the Public Health and Safety.

- § 368. Death from explosions, etc.
 - § 369. Death from collision on railroads.
 - § 370. "Public nuisances" defined.
 - § 371. Unequal damage.
 - § 372. Maintaining a nuisance, a misdemeanor.
 - § 373. Establishing or keeping pest-houses within cities, towns, etc.
 - § 374. Putting dead animals in streets, rivers, etc.
 - § 375. Keeping gunpowder, etc., unlawfully.
 - § 376. Violation of quarantine laws by masters of vessels.
 - § 377. Willful violation of health laws.
 - § 378. Neglecting to perform duties under health law.
 - § 379. Unlicensed piloting.
 - § 380. Apothecary omitting to label drugs, or labeling them wrongfully, etc.
 - § 381. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.
 - § 382. Adulterating food, drugs, liquors, etc.
 - § 383. Disposing of tainted food, etc.
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- § 400. Aiding or encouraging suicide a felony.
- § 400. Exhibiting deformities of person.
- § 400. Using or exposing animal with glanders.
- § 401. Animal having glanders to be killed.
- § 401. Adulterating candy.

368. Every person having charge of any steam-boiler or steam-engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

Negligence.—Carelessness is criminal, and within limits supplies the place of direct criminal intent—Anth. 208; 6 B Mon '11. And an act of omission as well as an act of commission may be criminal—3 Blatchf 523, 5 McLean, 242. So where an engineer left his engine in charge of a incompetent person, and death ensued, he was guilty of manslaughter—4 Cox C. C. 449, S. C. 3 Car & K. 123; or the officer of a steam boat through whose negligence an explosion takes place which destroys life—5 McLean, 242, or engineers and other officers generally, if injury ensues, as a regular and usual consequence, from their omission—3 Car & K. 368; 3 id. 123, 4 Cox C. C. 449.

369. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad car, locomotive, or train, who willfully or negligently suffers or causes the same to collide with another car, locomotive, or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

370. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square,

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one-fourth of a mile of any city, town, or village, and every person who puts the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir, from which water is drawn for the supply of the inhabitants of any city, city and county, or any town, in this State, so that the drainage from such carcass or offal may be taken up by or in such stream, pond, lake, or reservoir, or who allows the carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir, within the boundaries of any lands owned or occupied by him, or who keeps any horses, mules, cattle, swine, sheep, or live-stock of any kind penned, corralled, or housed, on, over, or on the borders of any such stream, pond, lake or reservoir, so that the waters thereof shall become polluted by reason thereof, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven of this Code. [In effect March 23rd, 1876.]

375. Every person who makes or keeps gunpowder, nitro-glycerine, or other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor.

376. Every master of a vessel subject to quarantine or visitation by the quarantine officer, arriving in the port of San Francisco, who refuses or omits -

1. To proceed with and anchor his vessel at the place assigned for quarantine, at the time of his arrival, or,

2. To submit his vessel, cargo, and passengers to the examination of the quarantine officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or,

3. To remain with his vessel at the quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any of the officers of health, by virtue of authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew; — is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both. [In effect March 9th, 1878.]

See Pol. Code, §§ 3004-3032; id. §§ 3013, 3014, 3017-3019.

377. Every person who is charged with a duty relating to the registration of deaths, under chapter three, title seven, of the Act to establish a Political Code, approved March 12th, eighteen hundred and seventy-two, who—

1. Willfully fails to keep a registry of the name, age, residence, and time of death of a decedent; or,

2. Willfully fails to register with the County Recorder a certified copy of such register, as is provided for in said chapter; or,

3. Willfully inter, cremates, or otherwise disposes of any human body, in any city, county, or city and county,

who is not a duly authorized agent, as provided for in

lects or refuses to perform the same, is guilty of a misdemeanor

See Pol. Code, §§ 3975-3983.

379. Every person, not the master or owner, or not authorized to act as pilot under the laws of this State, who pilots or offers to pilot any vessel to or from any port of this State for which there are commissioned or licensed pilots, or who pilots or offers to pilot any vessel to or from any port other than that for which he is commissioned or licensed, and for which there are pilots so commissioned or licensed, is guilty of a misdemeanor. [Approved March 30th, in effect July 1st, 1874.]

See Pol. Code, §§ 2429-2447, 2457-2468, 2478-2491, and note.

380. Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by such person, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

See N. Y. 397, Civ. Code, §§ 1708, 3333, 3523.


381. Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, with intent thereby to sell the goods therein, or

to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense. [Approved March 30th, in effect July 1st, 1874.]

382. Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

Adulteration of food. - To render unwholesome any food to be consumed is an indictable nuisance - 3 Maule & S. 11; 4 Camp. 12; 4 Maule & S. 214. That the party did not know that the provisions were adulterated has been held no defense—2 Allen, 189; 9 id. 489; 15 Mees. & W. 464; 10 Allen, 199, 103 Mass. 444; 16 R. I. 286; 6 Parker Cr. R. 306; *contra*, Farrell v. State, 32 Ohio St. 456.

383. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.



386. Every person who demands or receives compensation for the use of any bridge or ferry, or sets up or keeps any road, bridge, ferry, or constructed ford, for the purpose of receiving any remuneration for the use of the same, without authority of law, is guilty of a misdemeanor.

387. Every person who, having entered into an undertaking to keep and attend a ferry, violates the conditions of such undertaking, is guilty of a misdemeanor.

See §§ 2850, 2854.

388. Every person who willfully rides or drives faster than a walk on or over any toll-bridge, lawfully licensed, is punishable by fine not exceeding twenty dollars.

389. Every person not exempt from paying tolls, who crosses on any ferry or toll-bridge, or passes through any toll-gate, lawfully kept, without paying the toll therefor, and with intent to avoid such payment, is punishable by fine not exceeding twenty dollars.

390. Every person in charge of a locomotive engine, who, before crossing any traveled public way, omits to cause a bell to ring or steam-whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

See Civ. Code § 496. A habitual failure to give warnings and signals on intersecting roads is indictable—13 Bush, 288. See Civ. Code, § 425.

391. Every person who is intoxicated while in charge of a locomotive engine, or while acting as conductor or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train dispatcher, or as telegraph operator receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

See Pol. Code, §§ 2920-2933.

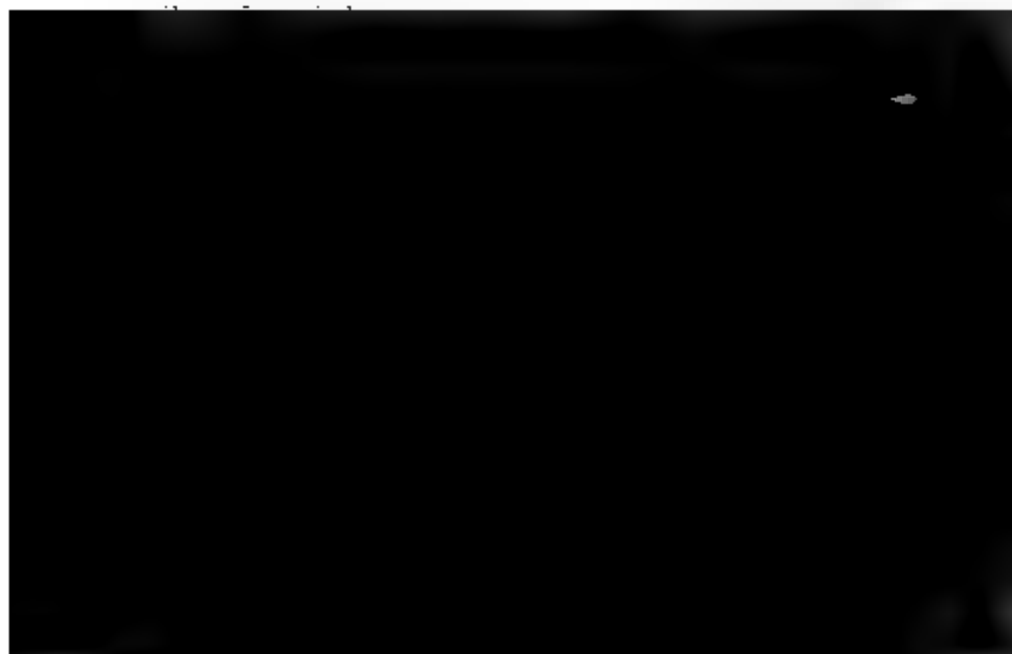
392. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a

misdeemeanor; and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight car," as used in this section, does not include a baggage, express, or mail car.

393. Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent, or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

394. Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

395. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is



399. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

400. Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony. [Approved March 30th, in effect July 1st, 1874.]

400. Every person exhibiting the deformities of another, or his own deformities, for hire, is guilty of a misdemeanor; and every person who shall by any artificial means give to any person the appearance of a deformity, and shall exhibit such person for hire, shall be guilty of a misdemeanor. [Approved February 4th, 1874.]

400. Any person, persons, company, or corporation, who shall bring, or cause to be brought, or aid in bringing into this State any sheep, hog, horse, or cattle of any kind, or any domestic animals of any kind, knowing the same to be affected with any contagious or infectious diseases, shall be guilty of a misdemeanor [Approved March 19th, 1880.]

401. Every animal having glanders, or farcy, shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition, and any such owner or person omitting or refusing to comply with the provision of this section shall be guilty of a misdemeanor [In effect April 16th, 1880.]

401. Every person who adulterates candy, by using in its manufacture terra alba, or any other deleterious substance or substances, or who sells or keeps for sale any candy or candies adulterated with terra alba, or any other deleterious substance or substances, is guilty of a misdemeanor [In effect March 16th, 1878.]

TITLE XI.

Of Crimes against the Public Peace.

- § 402. Disturbance of public meetings, other than religious or political.
- § 404. "Riot" defined.
- § 405. Riot, punishment of.
- § 406. "Rout" defined.
- § 407. "Unlawful assembly" defined.
- § 408. Punishment of rout and unlawful assembly.
- § 409. Remaining present at place of riot, etc., after warning to disperse.
- § 410. Magistrates neglecting or refusing to disperse rioters.
- § 411. Consequence of resisting process after a county has been declared in a state of insurrection.
- § 412. Prize fights.
- § 413. Persons present at prize fights.
- § 414. Leaving the State to engage in prize fights.
- § 415. Disturbing the peace in night-time.
- § 416. Refusing to disperse upon lawful command.
- § 417. Exhibiting deadly weapons in rude, etc. manner, so as to

404. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Riot. Riot is a tumultuous disturbance of the peace by persons assembled of their own authority, with intent of putting their designs into execution in a violent manner, whether the object be lawful or unlawful—4 Blackf. 300, Addis 18, 1 Bl. 187, 301, 311, 380, 614, 161, 4 Ed. 387, 1011, 430, 42 Id. 273, 10 Mass. 57, 2 McCord 11, 45 N. H. 63, 2 Rich. 37, Rye 288. There must be force or violence or acts tending thereto, and calculated to strike terror to the people—10 Mass. 58, 11 Id. 274, 33 Me. 334, 2 Id. Rayn. 109, 41 Car. & P. 373, and if one person be alarmed it is sufficient—Addis 17, 18, 39, 13; 7 Rich. 5. It is enough if the action of the parties be so violent and tumultuous as to be likely to cause fright, and if individuals are frightened—7 Rich. 5, 1 Spear 13, by threatening language or other means—aver 2 N. C. 30, 11 Id. 43, and an attempt to commit a riot of violence—2 N. C. 60, but personal violence or direct law committed—24 amp. 30, and the action or action plain is also unlawful—4 Mo. 147, as using arms in a riot—my book—1 Cr. 40. Even a lawful act may be done in such a violent and tumultuous manner as to constitute a riot—42 Id. 243, 70 N. C. 60, 51 Id. 26, see 18 Me. 246, 6 Verg. 535, 1 Hill, 18 C. 120, 14 Mo. 147, as removing a nuisance—3 Ill. 179, 11 Rich. 30, or raising a liberty pole—Addis 14.

The assemblage. The assemblage must be unlawful—1 Fred. 30, yet an innocent assembly may become riotous by subsequent riotous acts—2 McCord 11, 18 Me. 340, 42 Ind. 25, 51 Id. 380, 10 N. C. 60, and persons entering only a crowd, may become riotous if they rise as to violence—7 Rich. 5, as in a having at a dance—13 Id. 300, or disorderly behavior at a town meeting—10 Mass. 385, 60 Id. 347, 41 Id. 114, by making noises, etc., or other gathering—11, or going forward to the streets crying "fire," blowing horns, etc., or knocking a foot ball in a noisy and tumultuous manner to the terror of the people—Rich. 257. In North Carolina, where the assemblage is lawful, subsequent illegal acts of the members will not make them rioters—1 Fred. 30.

Numbers engaged. At common law three or more persons must concur to constitute the offense—4 Blackf. 30, 5 Ind. 365, 1011, 430, 11 Id. 28, 61 Blackf. 37, 2 Cr. 48, 30 Id. 27, 3 Verg. 48, 3 Rich. 37, 3 Spear 5, 1 Ashm. 4, 1 Ray, 388, 2 M. C. 140, 8 Ark. 59, 11 Met. 68, 3 Burr. 172, 1 Id. Rayn. 44, 1 Car. & P. 37, see 42 Ind. 25, 51 Id. 380. A riot may be committed where only two persons actually engage, if a third person is present aiding and abetting them—1 Me. 334, 30 Ga. 7. *Contra*, 1 Morris 141. The disturbance of the public peace must be in the execution of some private object—3 Spear, 300, 9 Rich. 37, 23 Law Reporter 703.

405. Every person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding two thousand dollars, or both.

Liability of parties. Riot at common law is a misdemeanor, punishable by fine and imprisonment—4 Car. & P. 37. All who encourage, incite, promote, or take part in it, whether by words, signs, or gestures, are punishable—5 Barb. 606, 21 Me. 40, 31 Id. 531, 11 Met. 68, 1 Mo. 300, 23 Id. 21, Addis 277, 9 Car. & P. 437, but mere presence alone

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will not render one liable—11 Cox C. C. 230. A person who commences a riot, but abandons it before it is unlabeled, is liable for the whole—13 Rich 93; 3 Cox C. C. 288. Women may be guilty of the offense—2 Ld. Raym. 1234, and a minor may be convicted of this offense—1 Arch. C. Pr. 12; but an infant under the age of discretion cannot—2 Ld. Raym. 1234.

406. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

Rout.—A disturbance of the peace by persons assembling with intent to do a riotous act, and actually moving toward its execution, is a rout—2 Whart. Cr. L. 6th ed. § 1536, 1 Russ. Cr. 9th ed 378. At common law at least three persons are necessary to constitute the offense—1 Hawk P. C. ch 65, § 1. Where the requisite number of persons meet, stake money, and propose to engage in a prize-fight, it is a rout—4 Spear, 539; and all present aiding and encouraging are equally guilty—16 Mass. 389; 1 Root, 275, 3 Mon. 218.

407. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

Unlawful assembly.—At common law it is an assemblage of three or more persons with intent to do that which if done would make them rioters, but making no motion toward doing the act—18 Me. 346; 2 McTord 117, 3 Barn. & Ald 596, 4 Car. & P. 373, 5 id 154, 9 id 431; 6 Up. Can. C. P. 372, as an assembly to witness a prize-fight—2 Car. & P. 234, 4 id 57, or an assemblage to go night-poaching—6 Car. & P. 67. To constitute the offense no overt act of violence is necessary—6 Up. Can. C. P. 372. Persons lawfully assembled may become an unlawful assembly if their conduct becomes such as would have made them an unlawful assembly at the outset—18 Me. 346, 2 McTord, 117, 1 Hall, S. C. 302, 6 Yerg. 515, 4 Pa. L. J. 33, and see 14 Mo. 147, 3 Stark. 79; 6 Car. & P. 91.

408. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Liability of parties.—All present aiding are equally guilty—16 Mass. 389; 1 Root, 275, 3 Mon. 218.

409. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

410. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter,

neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Suppression of riots. A justice of the peace is liable for not trying to suppress a riot—1 Yates, 449; so, to refuse to aid an officer in trying to suppress a riot is an offense—see 9 Mo. 268; Andls 277, 1 Car. & M. 314.

411. A person who, after the publication of the proclamation authorized by section seven hundred and thirty-two, resists or aids in resisting the execution of process in any county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists, or aids in resisting any force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the State prison not less than two years.

See ante, § 148, *post*, 731.

412. Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention, (without deadly weapons) either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the State prison not exceeding two years.

Affray. An affray is a fighting by mutual consent by two or more persons in some public place, to the terror of the people—6 Dinn, 293; 8 Humph. 514; 5 Yerg. 356, 13 Ga. 322, 53 Ala. 640; 10 Mass. 518, 6 J. J. Mar. 815, see 15 Ark. 24, rather actual or presumptive terror—5 Stroob. 53, 35 Ala. 372. There must be some fighting by at least two persons—53 Ala. 640, 1 Blackf. 377, 5 Yerg. 356, 4 Humph. 429, see 4 Hawks, 356, 2 Tenn. 198. It includes assault and battery—43 Ind. 18; 8 C. 1 Green C. R. 554, 55 Ala. 640, 15 Ark. 24. The place of fighting must be public—21 Ala. 218, 22 Id. 15, 13 Ga. 322, 3 Helsk. 278, 5 Stroob. 53, 8 Humph. 84, 22 Ind. 206.

Liability of parties. All persons present, aiding and encouraging, are equally guilty—13 Ga. 322, 15 Mass. 389; 1 Root, 275, 3 Mon. 218; see 71 N. C. 288. Every person concerned in a riot is equally responsible—9 Leigh, 603. As to surgeons—see 24 Gratt. 624.

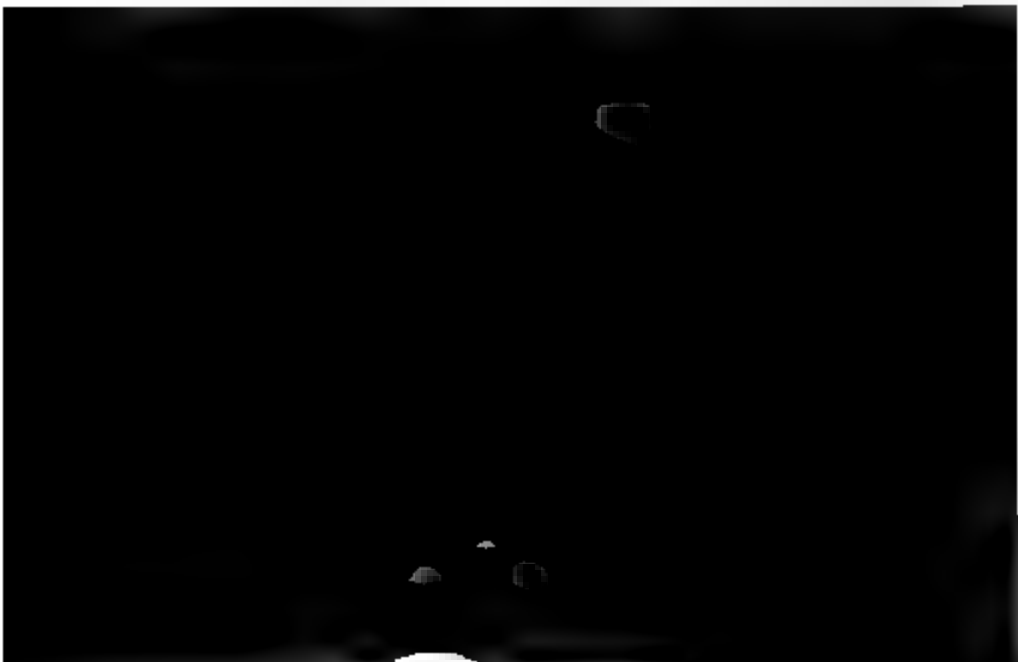
413. Every person willfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor.

414. Every person who leaves this State, with intent to evade any of the provisions of the last two sections,

and to commit any act out of this State, such as is prohibited by them, and who does any act which would be punishable under these provisions, if committed within this State, is punishable in the same manner as he would have been in case such act had been committed within this State.

Leaving State to fight a duel.—A challenge to fight in another State is penally cognizable in the State in which the challenge is issued—1 Brev. 243; 1 Treadl. 167; 33 Ga. 332; 1 Hawks, 467; see 12 Ala. 276; 2 Camp. 308; nor is it necessary to prove that the challenge ever reached its destination—2 Camp. 306. The offense is continuous and is triable in the State where the challenge issued—Thach. C. C. 306; 3 Brev. 243; 33 Ga. 332; 1 Hawks, 467; see 12 Ala. 276; 2 Camp. 308.

415. Every person who maliciously and willfully disturbs the peace of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight or fighting, or who, on the public streets of any unincorporated town, or upon the public highways in such unincorporated town, run any horse-race, either for a wager or for amusement, or fires any gun or pistol in such unincorporated town, or use any vulgar, profane, or indecent language within the presence or hearing of women



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where the most summary civil remedies are given—5 Binn. 277; 1 Br. 118; 2 Dev. 120; 3 Har. (Del.) 205; 3 Mass. 215; 1 Mo. 32. See 13 Pa. 392; but see 2 Pars. Cas. 411. See Desty's Crim. Law, §§ 28 b, c; and Civ. Code, §§ 1152-1175.

419. Every person who has been removed from a lands by process of law, or who has removed from a lands pursuant to the lawful adjudication or direction any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession such lands, is guilty of a misdemeanor.

420. Repealed. [In effect February 7th, 1880.]

TITLE XII.

Of Crimes against the Revenue and Property of this State.

- § 424. Embezzlement and falsification of accounts by public officers.
- § 425. Officers neglecting to pay over public moneys.
- § 426. "Public moneys," as used in the preceding section, defined.
- § 427. Failure to pay over fines and forfeitures received, a misdemeanor.
- § 428. Obstructing officer in collecting revenue.
- § 429. Refusing to give assessor list of property, or giving false name.
- § 430. Making false statements, not under oath, in reference to taxes.
- § 431. Delivering receipts for poll-taxes, other than prescribed by law, or collecting poll-taxes, etc., without giving the receipt prescribed by law.
- § 432. Having blank receipts for licenses, etc., other than those prescribed by law.
- § 433. *Repealed.*
- § 434. Refusing to give name of persons in employment, etc.
- § 435. Carrying on business without license.
- § 436. Unlawfully acting as auctioneer.
- § 437. *Repealed.*
- § 438. *Repealed.*
- § 439. Effecting insurance on account of foreign companies that have not complied with the laws of this State.
- § 440. Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.
- § 441. Board of examiners, controller, and treasurer neglecting certain duties.
- § 442. Having State arms, etc.
- § 443. Selling State arms, etc.

424. Each officer of this State, or of any county, city, town, or district of this State, and every other person charged with the receipt, safe-keeping, transfer, or disbursement of public moneys, who either—

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or

2. Loans the same, or any portion thereof; or, having the possession or control of any public money, makes a profit out of, or uses the same for any purpose not authorized by law; or

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

4. Unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person; or,

5. Changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law, or,

6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

7. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

9. Willfully omits to transfer the same, when such



a public officer for the fraudulent conversion of public moneys, although he and his sureties are liable on their official bond—62 Me. 100.

Subd. 5. In Georgia, a county treasurer, buying an order on the county for less than its par value, is indictable—47 Ga. 322.

Subd. 6. Officers are liable for a habitual neglect to account for small sums, and a gross neglect in keeping accounts is presumptive of guilty intent—6 B. Mon. 117, so, overseers of the poor are indictable for not accounting for moneys received for supplying the poor—see 54 Cal. 408, 2 Kerr, 643.

Subd. 10. Town tax collectors are public officers—62 Me. 106; and a *de facto* tax collector is punishable for embezzlement of money coming into his hands by virtue of his office—68 Me. 22, but his failure to pay over the moneys to the proper authority, although unexplained, is not presumption of a felonious appropriation—54 Cal. 64. Reports of public moneys received apply to ministerial officers—2 Tex. Ct. App. 325. A selectman is a public officer, and may be a receiver of public moneys—53 N. H. 610. See 62 Ill. 127.

425. Every officer charged with the receipt, safe-keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

426. The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidence of indebtedness, and all moneys belonging to the State, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by State, county, district, city, or town officers in their official capacity.

427. If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law, and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

See post, §§ 1457, 1570.

428. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this State are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

429. Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives

a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor in the discharge of his official duties, is guilty of a misdemeanor.

See Pol. Code, §§ 3629, 3631.

430. Every person who, in making any statement, not upon oath, oral, or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states anything which he knows to be false, is guilty of a misdemeanor.

See Pol. Code, §§ 3629-3631, 3674, 3675.

431. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll-tax, road-tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

See Pol. Code, Licenses, §§ 3353-3355; Revenues, §§ 3607-3607.

432. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll-tax re-



or carrying on of which a license is required by any law of this State, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

License Law of April 12th, 1880. -A Chinaman cannot justify a violation of § 3381, of the Pol. Code, in selling without a license, by claiming that he comes within the prohibition of the above act—4 Pac. C. L. J. 116. He must pay a license—*Id.* See Pol. Code, Licenses, §§ 3356-3386.

436. Every person who acts as an auctioneer in violation of the laws of this State relating to auctions and auctioneers, is guilty of a misdemeanor.

See Pol. Code, §§ 3284-3292, 3376.

437. [Repealed by Act of April first, eighteen hundred and seventy-two.]

438. [Repealed by Act of April first, eighteen hundred and seventy-two.]

439. Every person who in this State procures, or agrees to procure, any insurance for a resident of this State, from any insurance company not incorporated under the laws of this State, unless such company or its agent has filed the bond required by the laws of this State relating to insurance, is guilty of a misdemeanor.

See Pol. Code, § 622.

440. Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this State, who, upon demand, fails or refuses to permit the controller or attorney-general to inspect his books, papers, receipts, and records pertaining to his office, is guilty of a misdemeanor.

441. Every member of the board of examiners, and every controller or State treasurer, who violates any of the provisions of the laws of this State relating to the board of examiners, or prescribing its powers and duties, is guilty of a felony.

See Pol. Code, §§ 654-665.

442. Every person who unlawfully retains in his possession any arms, equipments, clothing, or military stores

belonging to the State, or the property of any company of the State militia, is guilty of a misdemeanor.

See Pol. Code, §§ 1982-1983.

443. Every member of the State militia, who unlawfully disposes of any arms, equipments, clothing, or military stores, the property of this State, or of any company of the State militia, is guilty of a misdemeanor.



TITLE XIII.

Of Crimes against Property.

- CHAP. I.** ARSON, §§ 447-53.
- II.** BURGLARY AND HOUSEBREAKING, §§ 459-63.
- III.** HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS, §§ 466-7.
- IV.** FORGERY AND COUNTERFEITING, §§ 470-82.
- V.** LARCENY, §§ 484-502.
- VI.** EMBEZZLEMENT, §§ 503-14.
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- VIII.** FALSE PERSONATION AND CHEATS, §§ 528-36.
- IX.** FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS, §§ 539-41.
- X.** FRAUDULENTLY KEEPING POSSESSION OF WRECKED PROPERTY, §§ 544-5.
- XI.** FRAUDULENT DESTRUCTION OF PROPERTY INSURED, §§ 548-9.
- XII.** FALSE WEIGHTS AND MEASURES, §§ 552-5.
- XIII.** FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT, §§ 557-72.
- XIV.** FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE, §§ 577-83.
- XV.** MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES, AND TELEGRAPHS, §§

CHAPTER I.

ARSON.

- § 447. Arson defined.
- § 448. "Building" defined.
- § 449. "Inhabited building" defined.
- § 450. "Night-time" defined.
- § 451. "Burning" defined.
- § 452. Ownership of the building.
- § 453. Degrees of arson.
- § 454. Arson of the first degree. Arson of the second degree.
- § 455. Punishment of arson.

447. Arson is the willful and malicious burning of a building, with intent to destroy it.

Arson defined—Arson is the willful and malicious burning of the house of another—51 Cal. 320, 12 Bush, 243, 3 Ired. 330; 18 Johns. 115; 12 Vt. 93, 11 U. S. Can. C. P. 69. It is a crime against the security of the dwelling-house as such, and the possession and not against the building as property—44 Cal. 44, 12 Mich. 106, 1 Green C. R. 54, 21 Conn. 342, see 52 Ala. 357, 12 Bush, 243, 3 Ired. 330, 2 Johns. 105, 61 Mo. 254; 19 N. Y. 537, 11 N. C. 88. The value of the property is not an element—53 Ala. 345. Malice and willfulness are essential ingredients, and no negligence and mischance can make one guilty—28 Miss. 100, 43 Ala. 27, although done in the pursuance of a illegal act—5 Ired. 350, unless in the commission of a felony—15 Ill. 56. But it is not necessary that there be a design to produce death—53 Miss. 384, 1 Parker Cr. R. 300; 15 Wis. 19. Malice implies an evil and malicious intent, however general—3 Chit. C. L. 1120, as, where the design is to burn one house and he burns another—32 Vt. 158, and the act which results in burning another's house need not be a felonious act—2 East P. C. 1030, 1031. The intent must be malicious—28 Miss. 100, 2 East P. C. 1033, or, to injure or defraud—32 Cal. 106, 37 Id. 274, 78 N. C. 552, as, an insurance company—51 N. H. 276, 19 N. Y. 537, 1 Parker Cr. R. 300, and a possibility of fraud is sufficient—1 Whart. C. L. 8th ed. 1643. See generally, 116 Mass. 27, 24 Ala. 74, Russ. & R. C. C. 138, 4 Post & F. 1102. Though it need not be to injure or defraud any particular person—Law R. C. C. 344. The intent may be inferred from the facts—51 Cal. 408, 53 Ala. 345, 51 Ga. 610, 63 Me. 128, 12 La. An. 38, 119 Mass. 354, 10 N. H. 42, 41 Tex. 558, 41 Ill. 530, 2 Car. & K. 306, 5 Cox C. C. 138, Russ. & R. C. C. 209; and, in pursuance of the intent, to set fire to any combustible matter in the building is an offense at common law—Thach. C. C. 240. See Deady's Crim. Law, title Arson.

448. Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted to be a "building," within the meaning of this chapter.

The building.—Any edifice capable of affording shelter for human beings is a "building"—51 Cal. 320, 311 P. 243. It need not be a finished structure; it is sufficient if it is connected and entered—12 Cox C. 106; Law R. 1 C. 1, 38. Its status of corporeity is a question of fact—1 Met. 107, 12 Cox C. 106. Law R. 1 C. 1, 38, but the remains of a wooden house after a fire is not a building—32 Lp. 4 an. Q. B. 429, 8 C. 1 Green C. R. 20a. A church is a building within the statute—Leach, 319, id. 320; or a school house—2 R. 10, 5 C. 464 & J. 402, 5 Man. 158; or a building tenanted by a city and fitted up for public use—2 Allen, 159, or a vessel—see Brown Alm. 188. In arson there is a workshop etc. have the same meaning as in case of building—51 P. 243. Q. B. 429, 522. A warehouse means any building used as such at the time—10 Ohio St. 25. Where there are no interior communications between two parts of a house, the separately occupied parts are considered as separate buildings—29 Conn. 312. See Dwyer's Crim. Law, title ARSON, BURGLARY.

449. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building," within the meaning of this chapter.

Habitation.—Any building is a dwelling-house which is wholly or in part usually occupied by persons lodging therein at night—1 Parker Cr. R. 262. Every house for dwelling and habitation is taken to be a mansion-house—4 Ga. 371. House means not only the dwelling but all out-houses which are part of the roof, such as barns and stables—3 Dutch. 33, 8 Mich. S. C. 354, 1 C. 455; 10 45, 63 N. C. 43, 4 Conn. 47, 4 Day & B. 185, 4 Ala. 30, 3 Rich. 242, 4 Me. 53, 2 M. L. 256, 5 Car. & P. 545, 3 Grant 163. A jail is an inhabited dwelling—3 Johns. 115, 41 Tex. 601, 4 Cal. 129, 5 Fred. 350, 53 Ga. 33, *contra*, 40 Ala. 30, id. 33, 4 Leigh 683, and see 22 Amer. Rep. 255. Where the entrance to a jail was through a dwelling-house, the entire structure is a house—30 Conn. 245, 2 W. Black 683. Courtyard means a courtyard or the space within any inclosure round a dwelling house—10 Cish. 48, and includes a summer-house—Russ. & R. 69 and a barn with hay and grain in it—5 Watts & 8 385, 1 Moody C. C. 209, *contra*, 81 Ill. 565; or a barn communicating with the dwelling—2 Mich. 250, or a building thirty-six feet distant, used as a dormitory for the owner's servants—8 Mich. 150.

450. The phrase "night-time," as used in this chapter, means the period between sunset and sunrise.

See sec. 453 and note.

451. To constitute a burning, within the meaning of this chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

The burning.—Burning is an essential ingredient of the crime—29 Ga. 105, 4 Ark. 44, 3 Fred. 50, 16 Johns. 263, 15 Mass. 105, 40 Ala. 659, 2 Amer. Rep. 251, but the house need not be entirely consumed, it is sufficient if any part is burned—5 Fred. 350, 15 Mass. 4. The offense is complete although the fire is put out, or goes out of itself—3 Fred. 350, 3 50, 16 Johns. 263, 15 Mass. 105. That something in the house was burned is not sufficient—40 Ala. 659, 1 Car. & M. 541. It is not essential that the woodwork of the house should blaze—Ryan & M. 20, 1 Car. & M. 541, if the wood be charred so as to destroy its

ing occupied, is not sufficient—33 Me. 30; 31 id. 523; 3 Cush. 529; or if it was merely casually occupied—13 Gratt. 763; or if the occupants be absent without intent to return—10 Cush. 478; 13 Gratt. 763. But if the house is burned during a temporary absence, it is the burning of an occupied dwelling—48 Ga. 116; 33 Me. 30; see 31 id. 523; 3 Cush. 529; 10 id. 478; 20 Conn. 245. But it must be usually dwelt in—53 Miss. 384; or occasionally used—4 Ga. 342; and it is immaterial whether the person charged had knowledge of its occupancy—1 Parker Cr. R. 252.

455. Arson is punishable by imprisonment in the State prison, as follows:

1. Arson in the first degree, for not less than two years.
2. Arson in the second degree, for not less than one nor more than ten years.

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

- § 459. "Burglary" defined.
- § 460. Punishment of burglary.
- § 461. "Housebreaking" defined.
- § 462. Punishment of housebreaking.
- § 463. "Night-time" defined.

459. Every person who enters any house, room, apartment tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary. [Approved Feb. 9th, in effect May 1st, 1876.]

Burglary defined.—Burglary is the breaking and entering in the night-time the dwelling of another, with the intent to commit a felony therein—53 Cal. 454, 7 Mass. 247; whether the felonious intent be executed or not—; Mass. 247, 1 Cox. (N. J.) 441, 37 Mich. 544, 4 Parker Cr. R. 153; 40 Ala. 334. The breaking and entering must be done feloniously—9 W. Va. 456. It is larceny and not burglary for a guest to steal from a bar-room where he had a right to enter—12 N. H. 42. In California, the time when a person enters a building is not burglary if he enters with a lawful purpose.



245, regardless whether it was or ever had been inhabited by members of the Lumbermen's Co., see 71 N. Y. 601, even giving the common-law definition which requires it to be a dwelling-house where the family usually reside. See also 14 St. 162. If a house is used, or is not used, and is such place equivalent to a house, as in *People v. R. & P. 100*, *R. & P. 101*, *1 Wis. 500*. The possession of a rental is sufficient. *41 N. Y. 51*. Burglary can be committed only by a person lawfully within the premises. *14 St. 162*, *14 St. 163*, *14 St. 164*, *14 St. 165*, *14 St. 166*, *14 St. 167*, *14 St. 168*, *14 St. 169*, *14 St. 170*, *14 St. 171*, *14 St. 172*, *14 St. 173*, *14 St. 174*, *14 St. 175*, *14 St. 176*, *14 St. 177*, *14 St. 178*, *14 St. 179*, *14 St. 180*, *14 St. 181*, *14 St. 182*, *14 St. 183*, *14 St. 184*, *14 St. 185*, *14 St. 186*, *14 St. 187*, *14 St. 188*, *14 St. 189*, *14 St. 190*, *14 St. 191*, *14 St. 192*, *14 St. 193*, *14 St. 194*, *14 St. 195*, *14 St. 196*, *14 St. 197*, *14 St. 198*, *14 St. 199*, *14 St. 200*. A house tenanted by a married woman is the house of the husband. *14 St. 162*, *14 St. 163*, *14 St. 164*, *14 St. 165*, *14 St. 166*, *14 St. 167*, *14 St. 168*, *14 St. 169*, *14 St. 170*, *14 St. 171*, *14 St. 172*, *14 St. 173*, *14 St. 174*, *14 St. 175*, *14 St. 176*, *14 St. 177*, *14 St. 178*, *14 St. 179*, *14 St. 180*, *14 St. 181*, *14 St. 182*, *14 St. 183*, *14 St. 184*, *14 St. 185*, *14 St. 186*, *14 St. 187*, *14 St. 188*, *14 St. 189*, *14 St. 190*, *14 St. 191*, *14 St. 192*, *14 St. 193*, *14 St. 194*, *14 St. 195*, *14 St. 196*, *14 St. 197*, *14 St. 198*, *14 St. 199*, *14 St. 200*.

What within the curtilage. Out-houses, store-rooms, warehouses, barns, etc., are included with the dwelling if they are within the curtilage, whether the yard be enclosed or open. *2 Park. Cr. R. 21*, *2 Hudson, 8 Cr. N. Y. 541*, *1 Dev. 27*, *1 Hayw. 14*, *14 St. 162*, *14 St. 163*, *14 St. 164*, *14 St. 165*, *14 St. 166*, *14 St. 167*, *14 St. 168*, *14 St. 169*, *14 St. 170*, *14 St. 171*, *14 St. 172*, *14 St. 173*, *14 St. 174*, *14 St. 175*, *14 St. 176*, *14 St. 177*, *14 St. 178*, *14 St. 179*, *14 St. 180*, *14 St. 181*, *14 St. 182*, *14 St. 183*, *14 St. 184*, *14 St. 185*, *14 St. 186*, *14 St. 187*, *14 St. 188*, *14 St. 189*, *14 St. 190*, *14 St. 191*, *14 St. 192*, *14 St. 193*, *14 St. 194*, *14 St. 195*, *14 St. 196*, *14 St. 197*, *14 St. 198*, *14 St. 199*, *14 St. 200*. A two-story house partly occupied as a store-house, and partly for dwelling, is a dwelling-house. *14 St. 162*, *14 St. 163*, *14 St. 164*, *14 St. 165*, *14 St. 166*, *14 St. 167*, *14 St. 168*, *14 St. 169*, *14 St. 170*, *14 St. 171*, *14 St. 172*, *14 St. 173*, *14 St. 174*, *14 St. 175*, *14 St. 176*, *14 St. 177*, *14 St. 178*, *14 St. 179*, *14 St. 180*, *14 St. 181*, *14 St. 182*, *14 St. 183*, *14 St. 184*, *14 St. 185*, *14 St. 186*, *14 St. 187*, *14 St. 188*, *14 St. 189*, *14 St. 190*, *14 St. 191*, *14 St. 192*, *14 St. 193*, *14 St. 194*, *14 St. 195*, *14 St. 196*, *14 St. 197*, *14 St. 198*, *14 St. 199*, *14 St. 200*.

460 Every burglary committed in the night-time is burglary of the first degree, and every burglary committed in the day-time is burglary of the second degree. [Approved Feb. 9th, in effect May 1st, 1872.]

461 Burglary of the first degree is punishable by imprisonment in the State prison for not less than one nor more than fifteen years. Burglary of the second degree is punishable by imprisonment in the State prison for not more than five years. [Approved Feb. 9th, in effect May 1st, 1872.]

House-breaking.—Burglary committed in the night-time is burglary of the first degree, and burglary committed in the day-time is burglary of the second degree. *32 Cal. 434*. They are distinct offenses—*32 Cal. 434*.

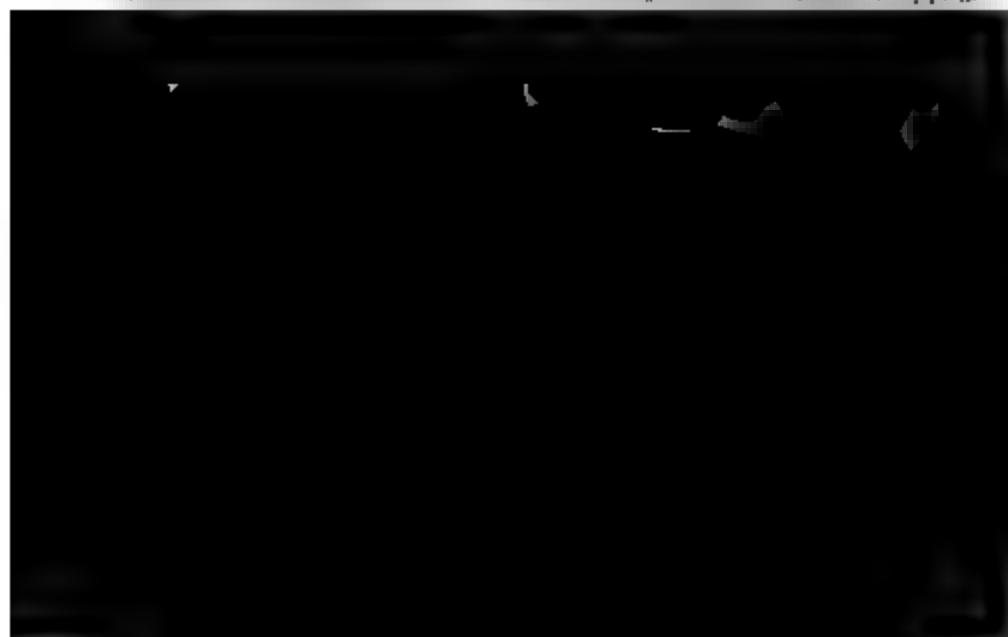
The mere fact that one person is with another who enters a house and steals therefrom, but who does not interfere to prevent the theft, does not render him guilty—1 Cal. 470. The offense is complete if the value of the property intended to be stolen was less than fifty dollars—3 Cal. 718, distinguishing 8 id. 518. Entering, by opening a door fastened by a latch, is the offense, if the intent to commit a felony exists—1 Lea, (Tenn.) 444; 3 Greenl. Ev. § 578.

Terms defined.—A "shop" includes any place where goods are sold or work is done for which money is received—3 Day, 131. See 4 Conn. 446; 1 Root 61, 11 N. H. 133, but not a counting-room—4 Parker Cr. R. 143, nor place of business—4 Cal. 363. The term "shop" is equivalent to store—14 Gr. 376, and breaking and entering into a shop adjoining a dwelling house is in larceny—3 Met. 316, 1d. 396, 1 Mass. 244, but see 20 Pick. 308. That the terms "shop" and "store" are not synonymous, see—11 N. H. 135. A "store" is a place where goods are exhibited for sale—12 N. H. 143, and breaking into and entering a store is indictable under the statute—10 Mass. 151, but see 4 Mass. 670. A "storehouse" includes a place of storage for all purposes, including commercial use—3 Fred. 510. A "warehouse" is any place used for the temporary storage of merchandise—4 Conn. 5, 10 Ohio St. 297. See 3 Berg. & H. 190, and includes a cellar—M. & H. 438; and a railroad depot—31 Vt. 297. A passenger-room in a railroad station is an office under the statute—4 Conn. 141.

462. Section four hundred and sixty-two of the Penal Code is repealed. [Approved Feb. 9th, in effect May 1st, 1870.]

463. The phrase "night-time," as used in this chapter, means the period between sunset and sunrise.

The time.—The offense of burglary in the first degree must be committed at night—H. v. M. 1871, 10 Cr. 111, but at any particular



CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

§ 466. Possession of burglarious instruments.

§ 467. Having possession of deadly weapons.

466. Every person having upon him, or in his possession, a picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break or enter into any building, or who shall knowingly make or alter or shall attempt to make or alter, any key or other instrument above named, so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing, or having reason to believe, that it is intended to be used in committing a misdemeanor or felony, is guilty of misdemeanor. Any of the structures mentioned in section four hundred and fifty-nine of this Code, shall be deemed to be a building within the meaning of this section. [In effect March 3rd, 1874.]

To procure, with a criminal intent, is an offense—Russ. & R. C. C. 308, 1 El. & B. 435; and possession may be shown on a charge of procuring—Russ. & R. C. C. 308, 1 Lew. C. C. 42.


467. Every person having upon him any deadly weapon with intent to assault another, is guilty of a misdemeanor.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

- § 470. Forgery of wills, conveyances, etc.
- § 471. Making false entries in records or returns.
- § 472. Forgery of public and corporate seals.
- § 473. Punishment of forgery.
- § 474. Forging telegraphic messages.
- § 475. Passing or receiving forged notes.
- § 476. Making, passing, or uttering fictitious bills, etc.
- § 477. Counterfeiting coin, bullion, etc.
- § 478. Punishment of counterfeiting.
- § 479. Possessing or receiving counterfeit coin, bullion, etc.
- § 480. Making or possessing counterfeit dies or plates.
- § 481. Counterfeiting railroad ticket, etc.
- § 482. Restoring canceled tickets.

470. Every person who, with intent to defraud another, falsely makes, alters, forges, or counterfeits any charter, letters, patent, deed, lease, indenture, writing



power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another, or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court, or the return of any officer to any process of any court, is guilty of forgery.

Forgery defined.—Forgery is the fraudulent making or alteration of a writing to the prejudice of another's rights—35 Cal 60; 4 Up. Can. 316; 1 Bears & B 506, Law R. 1 C C 200, 2 Leach, 73. It is the false making, or materially altering, with intent to defraud, any writing which, if genuine, might apparently be of legal efficacy, or the foundation of a legal liability—53 Ala 467, 5 Ark 34, 8 Iowa, 231, 13 299, 20 Id 307, 20 Id 546, 3 Cas 150, 2 Bay, 36, 2 Me 365, 30 Id. 41, 1 Tlanch C C 157, 2 Const B. C 669, 4 Parker Cr R 257, 6 Id. 4 Yerr 1, 15 Mass 536, Addis, 25, 1 James, 385. It is the making of an instrument fraudulently purporting to be that which it is not—20 Low Can 272, Law R. 1 C C 200, 60 Mich 1, 1 Gray 27, or fraudulent application of a false signature to a true instrument—1 Mo P C 653. Even a mark made in the name of another is forgery—Leach 57. Writing includes every thing done by the pen, by engraving, or by printing—3 Ark 44, 6 Cox 443, or otherwise—68 Ill. 28, or passing a name over another—1 Har (Del) 50, or, generally—4 Park R Cr L 100, 74 Cox 444. Bears & B 460, 1 Moody C C 30, 1, 304, or by photographic process—Ligh & C 32. The procuring without publishing or uttering constitutes the offense—Bay, 36, 2 Mass 37, Bears & B C C 1. The common-law offense is not superseded by the statute—1 Cr 156. The purpose of the statute is protection of society—35 Cal 603.

Subjects of forgery. The following instruments have been held subjects of forgery: A receipt to a foreign speciman—Cranch C C 18; a pass, or a receipt for oil—3 Ad 3, 150, 151, 2 Leach, 73. A receipt may be an object of forgery—Mass 53, 21 Vt 27, 7 Cal & 54, 201, 20, 1 Cal & M. A receipt for a part of a bill of exchange may be a subject of forgery when legal evidence against vendor—32 Ia 575, 2 How 474. But see *N. H. 206*, or entries in a pass-book—3 Cox

of a revenue stamp—28 Cal. 507; 32 Tex. 79; 47 N. H. 403; 16 Minn. 477; but see 23 Wis. 34. If it be capable of being *prima facie* proof in an action it is sufficient—Russ. & R. C. C. 33.

Similitude.—Forgery consists in giving the appearance of truth to a mere document. Law R. 11 C. 10. The resemblance of the forged to the genuine must be such as might deceive a person of ordinary caution—10 Cal. 47; 11 Cal. 32; 7 Pick. 35; 4 Wash. C. C. 733; Russ. & R. C. C. 33; or by reason of ordinary observation—5 N. H. 361; 7 Pick. 121; 4 Mass. 211; 211 ad 501; 7 Pick. 121; 2 H. 1. Del. 11. It need not so resemble the genuine as to deceive a discerning expert or officer of the bank or where it is stamped—11 Cal. 47; 11 Cal. 481; see 2 Del. 11; 2 East P. C. 50. If it be *prima facie* fitted to pass as true, it is so—11 Cal. 47; 5 N. H. 361; 7 Pick. 121; 4 Mass. 211; 4 Wash. C. C. 733; 2 H. 1. 505; 25 W. ad 42; 8 L. 46; 73; in 1808 Iowa, 231; 26 Id. 407; nor could it matter that detection would have followed a close inspection—H. 1. (Del.) 507. If there is a possibility to deceive, it is sufficient—19 La. An. 393. The similitude may exist even though notes of that denomination never had been issued—7 Pick. 127; 5 N. H. 367; 30 Mo. 236.

471. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

Public records and documents.—Judicial and political records are subjects of forgery, as a writ—2 Mass. 136; 6 H. 1. 490; 5 Car. & P. 100; or a bail bond—2 Va. Cas. 46; or a warrant of attorney—2 Cran. C. C. 621; Kaym. T. 81; or an order for discharge of a prisoner—2 East P. C. 80; Ryan & M. 393; or a deposition—50 Me. 439; or a marriage register—2 Cran. C. C. 621; 28 Id. 71; or a protection—2 Cran. C. C. 621; 18 H. 1. 42; or a will, though it purports to be that of a living person—H. 1. 308; 6 Serg. & R. 57; 1 L. 46; 21. But a document which does not on its face purport to be a copy of the record, is not a forgery—36 H. 1. 239; or a will accessed by an officer in his office of witnesses—3 Yerg. 190. A common-law oath is included in the term "other writings" under the United States Statute—11 Hatch 211. Putting a forged mortgage on record is a sufficient uttering—27 Mich. 336; 8 C. C. 3 Green C. R. 367.

472. Every person who, with intent to defraud another, forges or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or of any other State, government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal, or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

473. Forgery is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

474. Every person who knowingly and willfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes, or conspires to furnish, or causes to be furnished to any agent, operator, or employé, to be sent by telegraph, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment

Telegraphic messages—25 Up. Can. C. P. 440.

475. Every person who has in his possession, or receives from another person, any forged promissory note

possession of forged bills.—To constitute the crime of possession of counterfeit notes, it is not necessary that there be an intent to fill up, or an attempt to do so.—11 Cal 606, 29 P. 34. The same intent is required to be proved and proved 18 Mass 90, 5 Buss. 12, 5 C. 491. The possession of bank bills with intent to pass them in other States, is sufficient.—18 Mass. 332, 10 Gray 47. A bank bill of one State is a counterfeit note, and possession of it to alter it to pass as one of another State.—10 Gray, 47, 31 N. 395, see 2 Allen, 241. The possession of several bank notes on different banks, with intent to pass them, constitutes but one offense.—Conn. 43, 5 Parker 100; 80 S. Mass. 50.

§ 476. Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of a bank, corporation, copartnership, or individual, in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, or instrument in writing to be fictitious, is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

Uttering forged paper.—Passing a counterfeit is putting it off in exchange.—Bald. 367, 2 Binn. 337, Russ. & R. C. C. 25, 11 446; 11 Id. 24, 11 Id. 33, 2 Leach 706. The offense is complete when the offender is in possession of another.—21 Wend. 509, even though utterance is made.—1 A. B. L. 8, 10, 11 Vt. 101, 25 Mich. 388, 2 Leach 644; even if passed at a gaming-table.—Thacher C. 13, or for the sale of liquor.—4 Cal. 110. Delivering a bank note to a stranger to be passed is a passing.—11 Mass. 136. If there is a concert between two or more to pass counterfeit is the act of one is the act of all and the possession of one is the possession of all.—Bald. 292, 4 33.

Uttering.—Uttering a forged instrument is parting with it passing offering to pass it, whether the offer be accepted or not, knowing it to be forged.—29 Cal. 208, Bald. 367, 2 Leach 706, 10 Gray 713; 18 Brit. C. C. 84, Russ. & R. C. C. 25, 11 446, 11 Id. 34, 11 Id. 200, 2 Leach, 706. There must be an offering to pass.—1 C. C. 122, and see 7 Car. & P. 435, Russ. & R. C. C. 12, 11 406, 4 C. C. 430, 2 Leach 706. It may be shown by any means.—13 Cal. 446, 11 8 437, 17 Vt. 11. There must be an intent to pass it as genuine.—Bald. 367, 1 Abb. L. S. 137, 50 Am. 34, 28 Ga. 367. It must be published as true, knowing it to be false, and with intent to defraud some one.—28 Cal. 208, 50 Ga. 34, 18 Id. 307, 2 H. Wks. 449, 1 C. C. 578, and it is a defense that it was at the time so believed.—5 Car. & P. 435, Denio 43. It is a independent offense.—18 Mass. 90, 21 Vt. 11, and intent to defraud is essential.—29 N. J. L. 365, Thacher C. C. 13, 2 Th. 1 354. But this may be inferred from the facts.—see 1 How. 492, 27 Mich. 337, 3 Abb. N. Y. 101; 1 Cox C. C. 20, 11 Id. 430, 11 Id. 31, Russ. & R. C. C. 25,

Id. 169; 1 Car. & K. 797. Knowledge that the instrument is forged may be proved by other utterances—43 Cal. 612; 4 Wash. C. C. 725; Ball. 292; Id. 619; 4 Allen. 305, 19 Id. 186, 3 Brev. 667; 43 Ala. 893; 14 Crim. 430; 3 Hawks. 768. 2 Humph. 78; 46 Ill. 126; 34 Me. 129; 18 Met. 286; 3 Leigh. 751; 8 Id. 708, 18 Ohio, 217; 3 Ind. 366; 2 Rich. 414. See Desty's Crim. Law, title FORGERY.

477. Every person who counterfeits any of the species of gold or silver coin current in this State, or any kind or species of gold-dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

Counterfeiting.—The Congress of the United States has power to punish for counterfeiting—see Desty's Fed. Const. art. I, § 8, p. 27; but the power of Congress is not exclusive—5 How. 419, 9 Id. 860, 34 Cal. 162, 3 Mo. 411. Counterfeiting applies to the act of making any distinguished from the act of circulating—10 Law Reporter, 400, and the latter may be punished by the State—5 How. 419, 9 Id. 860, 34 Cal. 162, 1 Doug. (Mich.) 267, 31 Id. 22. 2 Broad. 8, 2 Law Reporter, N. H. 97. Counterfeiting a note, without any sufficient—1 Leach. 243, Id. 264. Brightening up base coin for circulation is counterfeiting—2 Va. Cas. 336. A State may punish for counterfeiting a national bank note—2 Ark. 49, and it is sufficient knowledge of it had the external appearance, and purported to be genuine, with the pretense of cashing it—Pek. 147, but where the note was a counterfeit, it was not a national bank note—10 Ark. 107.

Guilty possession.—The guilty participation in the act may be inferred from proof of possession of a quantity of the coin, and instruments and apparatus for making it. 3 McLean, 233, id. 208; possession with knowledge of the purpose for which they were designed. 41 Cal. 636. So a State may punish the offense of keeping counterfeit coin with intent to pass it. 4 Head 26; as coin in the similitude of Mexican dollars. 6 Met. 250, but Cal. for a gold coin not being lawful coin, the passing thereof is not within the statute. 1 Gray, 564. Evidence that the defendant had counterfeit coin for sale, and that he sold such coin to a party, is sufficient to convict—30 Cal. 717; see 22 Pick. 476, 4 Gray, 29.

480. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this State, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the State prison not less than one nor more than fourteen years, and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

Molds and tools. A state may impose a penalty for keeping molds and tools adapted to counterfeiting. 2 Oreg. 221; but not unless there was an intent to use them—34 Cal. 183, 2 Mass. 139, but see Law R. 1 C. C. 24, the possession of an instrument for making one side only of a counterfeit is sufficient—6 Met. 231.

481. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad company, or any lessee thereof, or any other person is punishable by imprisonment in the State prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine. [Approved March 30th, in effect July 1st, 1874.]

482. Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates, the

cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessees thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail, not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [Approved March 30th, in effect July 1st, 1874.]

CHAPTER V.

LARCENY.

- § 484. "Larceny" defined.
- § 485. Larceny of lost property.
- § 486. Grand and petit larceny.
- § 487. Grand larceny defined.
- § 488. Petit larceny.
- § 489. Punishment of grand larceny.
- § 490. Punishment of petit larceny.
- § 491. Dogs property.
- § 492. Larceny of written instruments.
- § 493. Value of passage tickets.
- § 494. Written instruments completed but not delivered.
- § 495. Severing and removing part of the realty.
- § 496. Receiver of stolen property.
- § 497. Larceny, and receiving stolen property out of the State.
- § 498. Stealing gas.
- § 499. Stealing water.
- § 500. Larceny of goods saved from fire in San Francisco.
- § 501. Purchasing or receiving in pledge junk, etc.
- § 502. Applies §§ 339, 342, and 343 to junk dealers.

484. Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another.

See Stat. app'd March 6th, 1872, and Stat. app'd March 20th, 1872, Appendix, pp. 714, 715.

Larceny defined.—Larceny is the wrongful or fraudulent taking of the property of another of some intrinsic value, without his assent and with the intention to deprive him thereof permanently.—15 Cal. 369, 28 Id. 338, 47 Id. 103, 5 Cranch C. C. 422, 19 Mo. 321, M. All. 209, 38 Tex. 273; S. C. 1 Green C. R. 348, 2 Leach, 1083, although he intends only to make temporary use of it—38 N. J. L. 176, 8 C. & Am. Cr. R. 399, and even if he did not intend to convert it to his own use—28 Cal. 38. It is compounded of the taking, the carrying away, and the felonious intent—16 Cal. 371. There must be the element of trespass to complete the offense—43 N. Y. 61, 56 Id. 394. The larceny of several articles belonging to different owners, at the same time, is one offense—57 Ga. 11, S. C. 2 Am. Cr. R. 344, 23 Ohio St. 339, S. C. 2 Green C. R. 542; 45 Tex. 77; 33 Am. Rep. 602, 1 Ind. 327, 1 Tex. Ct. App. 48, 3 Id. 40, 10 Humph. 101, 7 Mo. 55, see 2 McMull 382, 2 Mass. 400. When a second thief steals goods from the first thief, it is larceny—6 Pac. C. L. J. 453; 21 Mo. 14; 3 Hill, 395; 1 Leach, 522. Parties in pursuance of a common

When stolen, is punishable by imprisonment in the prison not exceeding five years, or in the county not exceeding six months, or by both, and it shall be sufficient evidence that such property was stolen, if the same consists of jewelry, silver, or plated ware, or of personal ornament, if purchased or received by a person under the age of eighteen, unless said property was sold by said minor at a fixed place of business carried on by said minor or his employer. [In effect February 1, 1874.]

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So generally - A party who was not present at the theft, but
cently, with guilty knowledge, received and aided in the dis-
the goods, is not an accessory to the theft, but is liable as re-
Cal 90, 424; 22 Cal 68; 1 Green C R 530. It is
not sufficient if Mass 1 1912 48, 444 648, and he may
be treated as principal if found 537. If he receives them simply to
hold in carrying them off, he is guilty as receiver - 1 N C 29,
Green C R 37. Receiving at the same time, goods stolen from
several parties, constitutes several offenses - Mass 499, 3 Hm.,
to property must be of some value, Low v R 8, 4 Conn.
10, 14 40 Iowa 26, 65 Mo 88, Chart R M 58, 11 Ott 108,
205; 27 Tex 3, 2 M 101 Mass 45. As to how much prop-
erty is required or aiding in the concealment of stolen
property, with guilty knowledge, is a crime of the first de-
App 304, 11 S 2. In Ohio it is a misdemeanor 27 Ohio St.
11 Green C R 530. It is essential to the crime to punish
every owner 12 Ill 110, 110 Ill 110, 110 Ill 110, 110 Ill 110,
professional thieves 45 C L 1, 80 pers 130, 130 C 130, 130 C 130,
to not the only liability of an owner - 4 C L 14 See 2
K3. There is no law offense charged by making the res-
ponsible party as to theft - Mich 4.

It must have been stolen. It must have been stolen before
 date covered - 1943 "6, 5, 14, 3", 4 S. 100 300, 800
 711 43, 11, 14, 3, 4 S. 100 300, 800
 the calendar must have been in the hands of the person - 4
 11 14, 3, 4 S. 100 300, 800, 4 S. 100 300, 800, but see 8

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ing.—The property must be received from the thief—? Deut-Cox C. C. 419, 44 Bl. 111, but receiving from his agent is

498. Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube, or other instrument, and connects the same, or causes it to be connected, with any main, service-pipe, or other pipe for conducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor.

A person secretly appropriating gas by severing a portion in a service pipe of the company is guilty of larceny--4 Allen, 308; 6 Cox C. C. 213.

See 6 Cox C. C. 213.

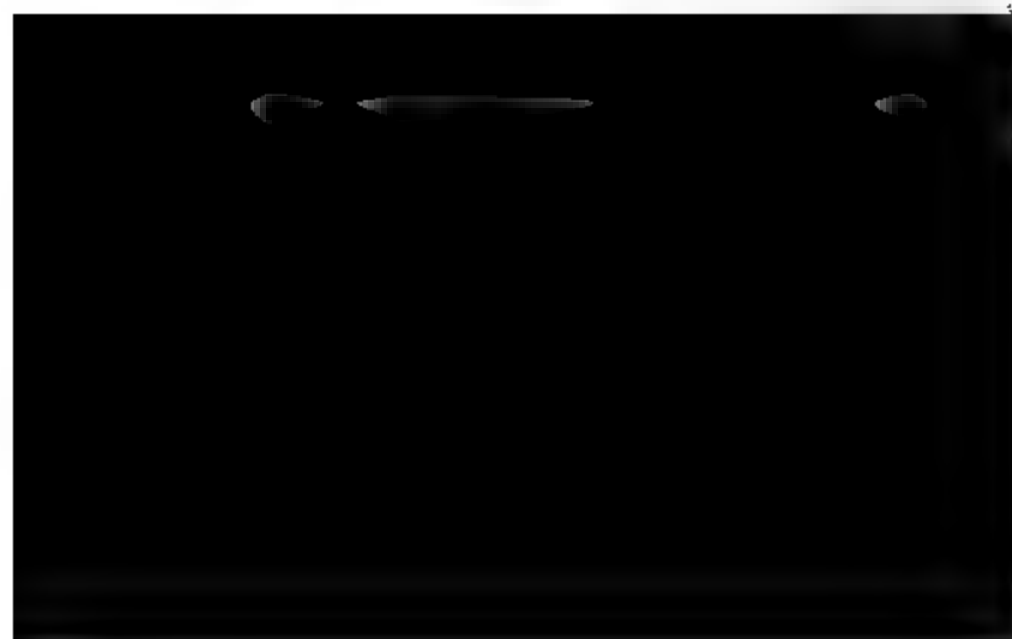
499. Every person who, with intent to injure or defraud, connects, or causes to be connected, any pipe, tube, or other instrument, with any main, service-pipe, or other pipe, or conduit, or flume for conducting water, for the purpose of taking water from such main, service-pipe, conduit, or flume without the knowledge of the owner thereof, and with intent to evade payment therefor, is guilty of a misdemeanor

500. Every person who, in the city and county of San Francisco, saves from fire, or from a building endangered by fire, any property, and for two days thereafter corruptly neglects to notify the owner or fire marshal thereof, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

See Pol. Code, § 3343.

501 Every person who purchases or receives in pledge, or by way of mortgage, from any person under the age of sixteen years, any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor.

502. Sections three hundred and thirty-nine, three hundred and forty-two, and three hundred and forty-three of THE PENAL CODE are applicable to persons carrying on the business of junk dealers, and apply to their transactions of purchase and sale, as well as to those of pledge or mortgage.



CHAPTER VI.

EMBEZZLEMENT.

- § 503. "Embezzlement" defined.
- § 504. When officer, etc., guilty of embezzlement.
- § 505. Carrier, when guilty of embezzlement.
- § 506. When trustee, banker, etc., guilty of embezzlement.
- § 507. When bailee, tenant, or lodger guilty of embezzlement.
- § 508. When clerk, agent, or servant guilty of embezzlement.
- § 509. Distinct act of taking.
- § 510. Evidence of debt undelivered a subject of embezzlement.
- § 511. Claim of title a ground of defense.
- § 512. Intent to restore the property is no defense.
- § 513. Actual restoration a ground for mitigation of punishment.
- § 514. Punishment for embezzlement.

503. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted

See ante, §§ 211, 435, 464, and notes.

Embezzlement.—The fraudulent appropriation of the property of another by one to whom it has been intrusted, is embezzlement—37 Iowa, 404; 3 Parker Cr. R. 579; 7 Tex. Ct. App. 418; 4 Up. Can. L. J. 183; 60, when property is voluntarily delivered to a person, who has not generally the care of his employer's property, and he converts it—3 Greene, Iowa 167, 65 N. C. 37. It imports the receipt of money belonging to a master or employer and a fraudulent appropriation before it reaches his hands—10 Up. Can. C. P. 117. It was not an offense known at common law—4 Up. Can. L. J. 184, but is purely a statutory offense—31 Cal. 188, and nothing which was largely at common law is included in it—41 Ill. 329; S. C. 2 Am. Cr. R. 114. The statute extends to persons acts which before were not punishable—38 Ill. 33; 7 Tex. Ct. App. 410. The statute of California was framed to comprehend those cases in which property is intrusted to clerks, servants, etc., by or for their masters, employers, etc.—37 Cal. 51, and the fraudulent conversion may be effected in any manner—7 Tex. Ct. App. 418. The statute is made applicable to attorneys who fraudulently convert their clients' property—4 Tex. Ct. App. 38, the embezzlement is verbiage at the same time being a separate embezzlement of each—100 Mass. 1. Where a person is induced by fraud to part with the title, it is embezzlement and not larceny—65 Ind. 321; 17 Ill. 339; 43 Ill. 37; 5 Gray 83. See ante, § 44.

The property.—The property must be the property of other than the defendant—2 Met. 343; 11 Met. 64; 107 Mass. 221; 2 Lewin, 256. A qualified ownership is sufficient as right of possession and control—7 Tex. Ct. App. 418.

Intent.—The fraudulent intent is to be determined from the evidence—7 Peters, 159, and it may be inferred from the facts, as

PEN. CODE. 19.

flight, concealment, and evasion—6 Cold. 307; 7 Tex. Ct. App. 619; 7 Cal. & P. 283. If a person in one county is intrusted with personal property, and he takes it to another county and there embezzles it, he cannot be tried in the county where he received it, unless the intent to embezzle was conceived there—61 Cal. 372.

504. Every officer of this State, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation, (public or private) who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement. [In effect April 6th, 1880.]

Corporate body.—A statute against embezzlement, from any corporate body in this State, does not include corporations doing business without authority of law—55 Ga. 733; S. C. 1 Am. Cr. R. 155. Where a bank cashier misapplied the funds of a bank, it is no defense that he believed his acts were sanctioned by some of the directors—11 Blatchf. 374; S. C. 2 Green C. R. 241. See ante, § 424, and note; and post, § 514.

505. Every carrier or other person having under his control personal property for the purpose of transporting

carried to the post-office, he is guilty of embezzlement—15 Wend. 551, but where A. intrusted B. with money to count, and B. walked away with it, it was not embezzlement—97 Mass. 554.

506. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

See notes to §§ 434, 504.

Trustees. Embezzlement by trustees is a different offense from embezzlement by agents—82 Pa. St. 472, S. C. 2 Am. Cr. R. 362. Where a party receiving money has a right to mix it with his own, he is not liable for so doing—2 N. Y. Supr. N. S. 383. The failure to pay over to a ward under age and married, after settlement of the estate, is not a felony—1 Lea, Tenn. 720. A person who appropriates to his own use money sent to him to be devoted to a particular purpose is liable—Law R. 20 C. 34, S. C. 1 Am. Cr. R. 337. It cannot consist of proceeds of trust property other than such as have a claim from its sale—3 Tex. Ct. App. 344. A creditor in suppressing collateral securities after debt due, if the trustee to return them after the debt is satisfied is liable—10 Mass. 1, or fraudulently misappropriating government securities although not indorsed—4 Iowa, 102. Where a bank treasurer alters the account-book of the bank to make it appear that deposit was made, and no proof that the deposit did not go with other bank funds, it is not embezzlement—1 Allen, 53.

Consignee.—The fraudulent misappropriation to his own use by a consignee or bailee is embezzlement—6 Tex. Ct. App. 344. So, where he denies the receipt, or makes a false statement or entry, or refuses to account for it—10 Gray, 13; but see 61 Ill. 382. The mere making of false entries and false accounts does not constitute the offense—118 Mass. 443.

Commission merchant.—Actual demand is indispensable to conviction under the statute—61 Ill. 382, S. C. 2 Green C. R. 538.

507. Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.

Bailee.—A bailee is within the statute, and the term bailee is not limited in the sense of a bailor to keep, to transfer, or to deliver—19 Cal. 600 overruling 81 142. The conversion of a bailee may be effected by s. o. whether authorized or not—7 Tex. Ct. App. 40. If money is intrusted to a person only to be kept for a bailor, its conversion is not embezzlement—3 Gray, 461, but this rule has been modified by statute—100 Mass. 9. An innkeeper who fraudulently converts baggage is guilty of embezzlement—30 Mich. 306, S. C. 2 Am. Cr. R.

111. It is sufficient delivery to an innkeeper where checks for baggage are delivered to him—30 Mich. 286; 8 O. 2 Am. Cr. R. 111. The fraudulent conversion of property by a bailor, or secreting it with a fraudulent intent to convert it, is embezzlement—81 Cal. 274.

502.—Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement.

Clerk or servant. A clerk or servant appropriating money or goods intrusted to him in the course of his employment is guilty of embezzlement—15 Wind. 147, so of money received on bills collected—11 Nev. 28, denying it at 57, so if he obtains possession of goods with authority to dispose of them, he may be guilty—30 Ala. 129 Ind. 200. A person assisting his father in his duties as clerk may be guilty of embezzlement as to his father, for converting the money of his father's employers—Law R. 21 (130 N. C.) Am. Cr. R. 132. A person engaged to sell oil orders to be paid by commissions is not a clerk or servant—Law R. 21 (141, N. C.) Am. Cr. R. 130. Giving a person a watch in trade off for a wagon for which service he was to be paid is not an employment—1 Iowa. 84 N. C. 1 Am. Cr. R. 146. Appropriating money paid on his master's check is embezzlement—Gresh. 54 or a bill of exchange—32 Ala. 500. Where no privity of employer and employee exists, it is not embezzlement—14 Gray 290, where the owner's possession is divested—7 Mass. 504 though a defendant a clerk and servant—7 Mass. 48. It is not embezzlement if a clerk or servant of money paid over by mistake—14 Gray 290. A clerk may convert money received for his employer and be guilty of embezzlement—14 Gray 290.

the servant of the creditor—5 Denio, 76, nor is he bailee—62 Il. 17; nor is the keeper of a county poor house an agent or servant of the superintendent of a incorporated company—22 N. Y. 245, nor is a merchant of the water a carrier—10 Ill. 433, 5, nor are parties as to each other, unless the contract is for both or is complete—3 Ill. Ct. App. 52, nor is a person employed to solicit orders on a commission—Law R. 2 C C 34, 8 C. 1 Am. Cr. R. 130, 14 Il.

509 A distinct act of taking is not necessary to constitute embezzlement.

See 15 Wend. 581.

510. Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

511. Upon any indictment for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him.

Claim of title.—If the defendant supposed he had a right as joint t., he cannot be convicted. 114 Mass. 443, yet a man may be convicted for embezzling his own mortgage—3 Allen, 392.

512. The fact that the accused intended to restore the property embezzled, is no ground of defense or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

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513. Whenever, prior to any information laid before a magistrate charging the commission of embezzlement, the person accused is voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground

of defense, but it authorizes the court to mitigate punishment, in its discretion.

514. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it shall be taken as its value; *provided*, that if the embezzlement or defalcation be of the public funds of the United States, or of this State, or of any county, city and county, or municipality within this State, the offense is a felony, and shall be punishable by imprisonment in the State prison not less than one year nor more ten years; and the person so convicted shall be ineligible thereafter to any office of honor, trust, or profit under this State. [In effect April 6th, 1880.]

Punishment.—That a party is liable to prosecution for embezzlement of national bank-notes under United States statutes, does not relieve him from punishment under common law or under a State statute—116 Mass. 1. The punishment is the same as that for larceny—4 Met. 488.

CHAPTER VII.

EXTORTION.

- § 518. "Extortion" defined.
- § 519. What threats may constitute extortion.
- § 520. Punishment of extortion in certain cases.
- § 521. Extortion committed under color of official right.
- § 522. Obtaining signature by means of threats.
- § 523. Sending threatening letters with intent to extort.
- § 524. Attempts to extort by means of verbal threats.
- § 525. Officers of railroad companies making overcharges.

518. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

See *ante*, 211, 494, and 503.

Extortion.—The act to prevent extortion was designed to afford a remedy of a summary character against office-holders: 45 Cal. 199. At common law, extortion is taking by color of office money or other thing of value that is not due: 6 Cowen, 661; 3 B. & J., before it is due—6 Cowen, 661, 7 Pick. 27, 33 N. J. L. 132, 2 Sneed, 159, 1 Yerg. 261, 1 Mont. 322, 55 Ala. 125, 1 Lea (Tenn.) 271; 5 Speed, 63, 3 Sawy. 473; or more than is due: 1 Yeates, 71. The officer must have acted in his official capacity: 55 Ala. 125, 10 Mass. 233. The design to collect fees to which he was not entitled, constitutes the corrupt intent which is the essence of the offense—54 Ala. 254. A corrupt motive is essential: 3 Brev. 175, 1 Mass. 228, 15 Id. 335, 17 Id. 40, 7 Leigh, 129, 2 Mo. 22, 1 Pick. 171, 7 Id. 279, 15 Wend. 237, except where the bare taking is made in retaliation: 35 N. J. L. 135, but the summary remedy has not taken away the common-law remedy: 7 Pick. 24, 13 Serg. & R. 426. It is enough if any valuable thing is received: 5 Blackf. 460, 1 Ld. Raym. 148, but a mere agreement to pay is not sufficient—10 Mass. 91, 5 Id. 523, unless the agreement can be made the basis of a suit—1 Ld. Raym. 148. The taking must be willful and corrupt—54 Ala. 254, 1 Yeates, 71, 2 Mo. 22, 15 Wend. 237.

Who liable.—A public officer only can be convicted of this offense—56 Ga. 385, but that he is an officer *de facto* is sufficient—3 Fred. 171. See *Desty's Crim. Law*, § 84 b.

519. Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,
2. To accuse him, or any relative of his or member of his family, of any crime; or.

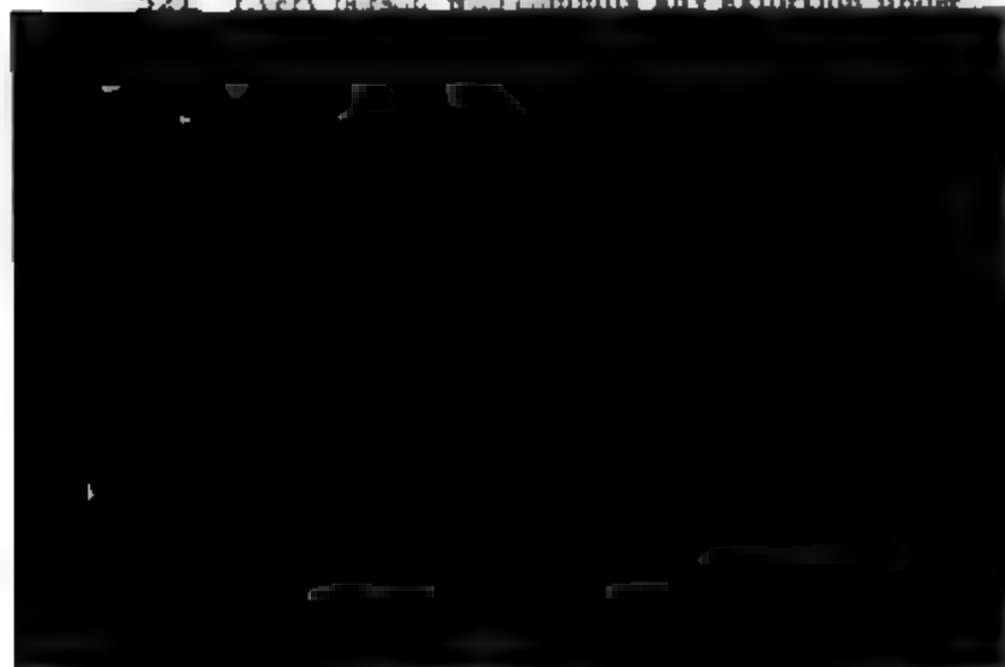
3. To expose, or impute to him or them any deformity or disgrace, or,

4. To expose any secret affecting him or them.

Extortion by others than officers.—Obtaining the property of another by threats, consists in the threatening, whether the threats did or did not produce the desired effect—1 Dall. 204, 20 Mo. 71. The offense is sufficiently defined by statute—43 Ind. 308. It is enough if the threatening to accuse of crime was willful and intentional—122 Mass. 19, 114 Id. 40, 1 Cush 336, whether the party be innocent or guilty of the crime imputed to him—1 Car. & P. 412. As, threatening to accuse one of seduction and demanding money to let him go is a present threat—100 Mass. 409, or extorting a note upon the representation that a female is with child by him—15 Hun. 247, or accusing a man of keeping a woman as his mistress—34 Ind. 400, R. C. 7 Am. Cr. II. 12. So, a false statement that a warrant had been issued is a threat—12 Allen. 400, and a threat to complain to a police officer is a threat to accuse of crime—100 Mass. 13. So sending a letter threatening that if he did not pay a certain amount he would bring a prosecution against him, and send him to the penitentiary—30 Mich. 601, but see dissenting opinion, Id. The word "maliciously" refers simply to the doing of the unlawful act without excuse—123 Mass. 19.

520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the State prison not exceeding five years.

521. Every person who commits any extortion under



ply, any threat such as is specified in section five hundred and nineteen, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Extortion.—Extorting money by a false statement that prosecution had been commenced against him—23 Pa. St. 253, but not if the offer is made to illegally compromise the offense—10; 7 Car. & P. 181. A threat to falsely accuse, through hand-bills and newspapers, of keeping a woman as his mistress, with intent to extort money, is sufficient—54 Ind. 430, 8 C. 2 Am. Cr. R. 18. Obtaining horses from an ignorant countryman by threats of a criminal prosecution for alleged horse-stealing and by threats against his life, is indictable—1 Bay, 282. A conspiracy to extort money is *per se* an offense at common law—6 Dowl. & R. 345, 4 Barn. & C. 329, S. C. 3 Lead. C. C. 34. See Desty's Crim. Law, § 84.

Threatening letters.—A letter in defendant's own name, sent to enforce payment of a debt, is not within the statute—3 Barb. 427; see 1 Leach, 445, 2 East P. C. 1116. Dropping a letter in a man's way is a sending—Russ. & R. 308. To put a letter in a place where it would be likely to be seen by the person to whom it is directed is an uttering—5 Cox C. C. 226.

524. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section five hundred and nineteen, to extort money or other property from another, is guilty of a misdemeanor.

525. Every officer, agent, or employé of a railroad company, who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

See Civ. Code, §§ 489, 2174, 2186, 2180-2181, 2194-2203.

CHAPTER VIII.

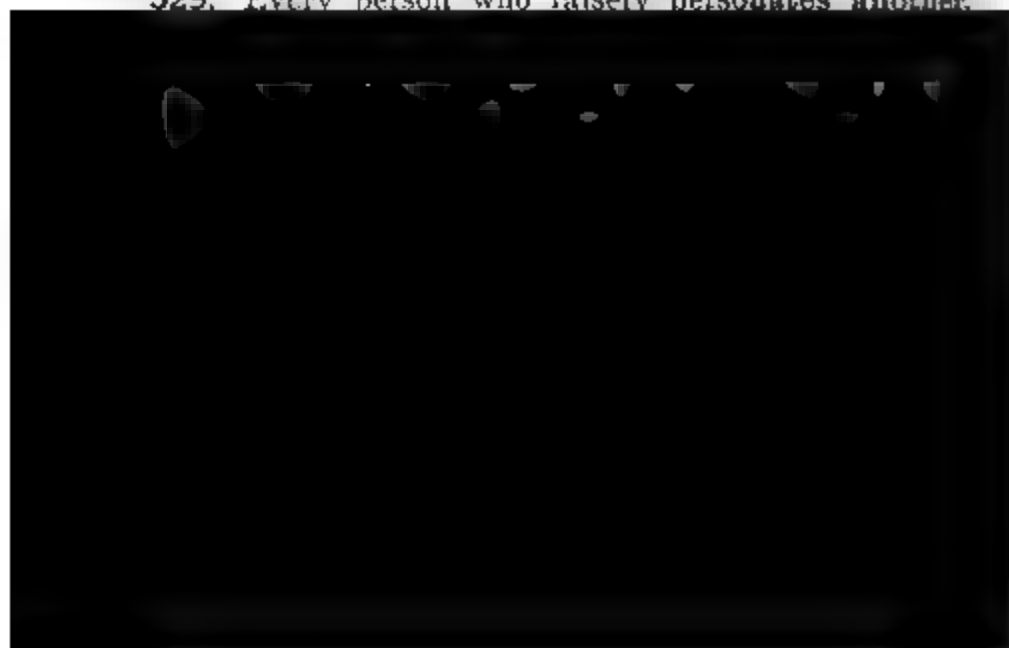
FALSE PERSONATION AND CHEATS.

- § 528. Marrying under false personation.
- § 529. Falsely personating another in other cases.
- § 530. Receiving property in a false character.
- § 531. Fraudulent conveyances.
- § 532. Obtaining money by false pretences.
- § 533. Selling land twice.
- § 534. Married person selling lands under false representations.
- § 535. Mock auction.
- § 536. Consignee, false statement by.
- § 537. Defrauding inn or boarding-house.
- § 537. Removal of mortgaged chattels.
- § 537 1/2. Fraudulent registration of cattle.

528. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

A mere promise of marriage is not sufficient—3 Moody C. C. 224.
See Civil Code, § 58.

529. Every person who falsely personates another,



exceeding two years, or by fine not exceeding five thousand dollars.

False personation.—Assuming a fictitious name is a false pretense, if it influences the obtaining of money or goods—19 Pick. 112; so, of obtaining goods to be sent out of the State—105 Mass. 172; so, of assuming the name of another to whom money is due—19 Pick. 171; 2 Pars. Cas. 332, 6 Cox C. C. 515, 9 Ad. & E. 276, Russ. & R. C. C. 81; 7 Car. & P. 784.

530. Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

A false character.—A false representation of being agent of a party having ample means is within the statute—6 Cox C. C. 515, or falsely pretending to be a certain attorney—7 Car. & P. 191, or a certain clergyman of standing—41 Miss. 579, 34 N. Y. 351, or a constable, and obtaining property by extortion—22 Pa. St. 253, 7 Car. & P. 151, *contra*, 4 Barb. 151, 46 N. Y. 40, 4 Ill. 9, or that he was an officer and had a warrant to arrest a person—49 Ind. 367, 59 Ill. 21, and thereby obtaining a promissory note—63 Id. 31; or that he was a captain of a company, and obtained money on an assignment of his claim for bounty—5 Parker Cr. R. 31, see 9 Ad. & E. 211, 9 Cox C. C. 158, or falsely personating a physician, and thereby inducing the purchase of a valueless medicine—7 Car. & M. 557, or by falsely assuming the dress of a college student—2 Pars. Cas. 333. Where a married woman obtained general credit by pretending to be unmarried—Sayers, 229.

531. Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands, or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies, or defends the same, or any of them, as true, and done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor.

validity of a mortgage—10 Cox C. C. 677; Car. & M. 249; 7 Cox C. C. 126, 131; but see id. 312, 8 id. 233, or that certain land is unincumbered—31 Me. 438, or that a particular mortgage is a first lien—5 Parker Cr. R. 142. Exhibiting letter-heads, business cards, or drafts making a note payable at a certain bank, and drawing an order for money, are false representations of solvency—81 Ill. 98.

Operative cause.—The false pretense must be the operative cause of the transfer—1 Cush. 33; 7 Allen, 549, 104 Mass. 349, 114 id. 325, 1 Me. 244, 5 Dutch. 14; 58 Ind. 98; 2 Parker Cr. R. 177, 7 Car. & P. 35, 5 Up. Can. J. J. N. S. 21, 11 Cox C. C. 65, 14 Up. Can. C. P. 529, 26 Up. Can. C. P. 312; id. 15, 9 A. J. & E. 27; 7 Cox C. C. 136. The obtaining of the property must not be too remotely connected with the false pretense—2 Up. Can. J. J. 139, Deane & B. 40, Law R. 1 C. C. 56. But the false pretense need not be the exclusive motive—17 Kan. 542, 8 C. 2 Am. Cr. R. 249, if it is a part of the moving cause it is sufficient—62 Barb. 62, 17 Kan. 542; 8 C. 2 Am. Cr. R. 239, 14 Wend. 347, if it had a preponderating influence—15 Mass. 491, 13 Wend. 67, 14 id. 547, 34 N. Y. 254, 4 Barb. 351, 13 Gratt. 512, 55 Miss. 513, 41 id. 570, 17 Me. 11, 24 id. 77, 33 N. J. L. 445; and a concurrent promise will not neutralize it—12 Conn. 101; 6 Cox C. C. 467; 7 id. 394, 8 id. 12; 9 id. 158; 7 Car. & P. 191; 2 Moody C. C. 234. The preponderation of the influence must be proved—2 Parker Cr. R. 191.

533. Every person who, after once selling, bartering, or disposing of any tract of land or town lot, or, after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barter, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the State prison not less than one nor more than ten years.

Selling land twice.—Under the statute, selling land twice is an indictable offense—35 Cal. 479; except where the second grantee is informed by the grantor of the terms of the first sale—id.; but giving a mortgage on lands sold is not disposing of the land, within the statute—45 Cal. 342.

534. Every married person who falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations willfully conveys or mortgages the same, is guilty of felony.

535. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the State prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment, and, in addition thereto, forfeits any license he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this State.

See Pol. Code, § 3234.

536. Every commission merchant, broker, agent, factor, or consignee, who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, broker factor, or consignee, a false statement concerning the price obtained for, or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor, or consignee, for sale, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment [In effect April 15th, 1880.]

537 Any person who obtains any food or accommodation at an inn or boarding house without paying therefor, with intent to defraud the proprietor or manager thereof or who obtains credit at an inn or boarding house by the use of any false pretense, or who, after obtaining credit or accommodation at any inn or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food or accommodations, is guilty of a misdemeanor [Approved March 1st 1880.]

537. Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred

and fifty-five of the Civil Code, except locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, voluntarily removes or permits the removal of the mortgaged property from the place where it was situated at the time it was mortgaged, without the written consent of the mortgagee, with intent to deprive the mortgagee of his interest therein, is guilty of a misdemeanor. [In effect March 10th, 1887.]

537] Every person who shall, by any false or fraudulent pretense, obtain from any club, association, society or company organized for the purpose of improving the breed of cattle, horses, sheep, swine, or other domestic animals, a certificate of registration of any animal in the Herd Register, or any other register of any such club, association, society or company, or a transfer of any such registration; and any person who shall, for a legal consideration, give a false pedigree of any animal, with intent to mislead, shall be guilty of a misdemeanor.

Sec 2. Every person willfully advertising any of such animals for purposes of copulation or profit, as having a pedigree other than the true pedigree of such animal

person, is punishable by imprisonment in the State prison not less than three years.

See 1 Wash. C. C. 363 and see Acts of Congress Freight's. Dig. pp. 209-211.

Destroy means to unfit a vessel for service beyond hope of recovery by ordinary means. 4 Dall. 412, 8 C. 1 Wash. C. C. 363. The intent to defraud is material. 6 McLean 274. See generally, 11 Wheat. 392, 5 McLean 513, 1 Law Reporter N. S. 151, 3 Wash. C. C. 146, see Rev. Stat. U. S. § 5364-6.

540 Every person, other than such as are embraced within the last section, who is guilty of any act therein specified, is punishable by imprisonment in the State prison for a term not exceeding ten years.

541. Every person guilty of preparing, making, or subscribing any false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, is punishable by imprisonment in the State prison not exceeding three years.

CHAPTER X.

FRAUDULENTLY KEEPING POSSESSION OF WRECKED PROPERTY.

§ 544. Detaining wrecked property after salvage paid.

§ 545. Unlawful taking of wrecked property.

544. Every person who keeps any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon have been agreed to or adjusted, and the amount thereof has been paid to him, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or both.

See Pol. Code §§ 2403-2415.

545 Every person who takes away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or knowingly has in his possession any goods so taken or found, and does not deliver the same to the sheriff of the county where they were found, or notify him of his readiness to do so,

within thirty days after the same have been taken by him, or have come into his possession, is guilty of a misdemeanor.

See Pol. Code, §§ 2403-2418.

CHAPTER XI.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 548. Burning or destroying property insured.

§ 549. Presenting false proofs upon policy of insurance.

548. Every person who willfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person, or of any other, is punishable by imprisonment in the State prison not less than one nor more than ten years.

See *ante*, notes to §§ 447, 452, and see Civ. Code, §§ 2527-2531.

Burning to defraud insurers is an indictable offense under the statute. See *People v. ...*, 117 N. Y. 261, 26 N. E. 761, 10 P. S. 599 and 600, 100 N. Y. 261, 26 N. E. 761, 10 P. S. 599 and 600.



CHAPTER XII

FALSE WEIGHTS AND MEASURES.

- § 552. "False weight" and "measure" defined.
- § 553. Using false weights or measures.
- § 554. Stamping false weight, etc., on casks or packages.
- § 555. Weight by the ton or pound.

552. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

See Pol. Code, §§ 3209-3223.

553. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

Use of false weights.—The use of false weights and measures on the sale of property is cheating—6 Mass. 72, 13 Johns. 391; 9 Wend. 182; 13 id. 311, 41 id. 37, 3 Harr. 187, 1 B. acc. W. 273, 3 Term Rep. 104. Falsely representing the weight of an article is within the statute—4 Cox C. C. 263, 1d. 262, but not if only done to induce to a purchase—3 Fost. & F. 838, see 3 Cox C. C. 460, so to pretend to have weighed it and falsely representing its weight, is a false pretense—3 Fost. & F. 838.

554. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

Marks and stamps.—A baker marking bread at overweight is guilty of cheating—1 Dan. 47; but not if no weights be used—1d.; 3 Const. S. C. 179, 89; selling an article with a forged seal on it—2 Russ. Cr. 609; or a false stamp or trade-mark—2 East P. C. 850.

555. In all sales of coal, hay, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound, and any person violating this section is guilty of a misdemeanor. [Approved Feb 15th, 1876.]

CHAPTER XIII.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER
FRAUDS IN THEIR MANAGEMENT.

- § 557. Frauds in subscriptions for stock of corporations.
- § 558. Frauds in procuring organization, etc., of corporation.
- § 559. Unauthorized use of names in prospectus, etc.
- § 560. Misconduct of directors of stock corporations.
- § 561. Savings-bank officer overdrawing his account.
- § 562. Receiving deposits in insolvent banks.
- § 563. Frauds in keeping accounts in books of corporations.
- § 564. Officer of corporation publishing false reports.
- § 565. Officer of corporation to permit an inspection.
- § 566. Officer of railroad company contracting debt in its behalf exceeding its available means.
- § 567. Debt contracted in violation of last section not invalid.
- § 568. Director of a corporation presumed to have knowledge of its affairs.
- § 569. Director present at meeting, when presumed to have assented to proceedings.
- § 570. Director absent from meeting, when presumed to have assented.

558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the State prison not less than three nor more than ten years.

See Civ. Code, §§ 282-320, 322-349, 350, 377, 378. See 3 Sand. 164.

559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

See Civ. Code, §§ 292, 293, and see *ante*, § 558.

560. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either—

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation, or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, *with the intent to enable any stockholder to with-*

draw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation;

—is guilty of a misdemeanor.

See Civ. Code, "Corporations"; and see *ante*, §§ 509, 555.

561. Every officer, agent, teller, or clerk of any savings-bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a misdemeanor.

Overdrawing account—by bank director or officer of a bank, is indictable—4 Zab. 478.

562. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

See 4 Zab. 478.

563. Every officer, agent, teller, or clerk of any bank,



not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

See *ante*, § 553.

Agent of corporation.—An indictment lies against an agent of a corporation for making false entries in the corporate books—53 Cal. 615. See *post*, § 550.

564. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony. [Approved January 27th, 1876.]

See Civ. Code, § 316. This section defines several distinct offenses—53 Cal. 643; see 6 Abb. Pr. 47, 11 N.J. 234.

565. Every officer or agent of any corporation, having or keeping an office within this State, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

See Civ. Code, §§ 377, 378, 382, 383. Books to be kept open for inspection—5 N. Y. 562. The statute gives the stockholder not only the right to inspect the books but to take copies of the same—1 Field. 562.

566. Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

Offenses defined.—This section defines two or more offenses—one being a concurrence by an officer of a corporation in making a false statement, and the other a concurrence in its publication.—§§ Cal. 42. See Civ. Code, §§ 309, 458, 457.

567. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

568. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

569. Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

See Civ. Code, §§ 309, 317, 377.

570 Every director of a corporation or joint-stock as-



572. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

PEN. CODE.—21.

CHAPTER XIV.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

- § 577. Issuing fictitious bills of lading, etc.
- § 578. Issuing fictitious warehouse receipts.
- § 579. Erroneous bills of lading or receipts issued in good faith.
- § 580. Duplicate receipts must be marked "duplicate."
- § 581. Selling, etc., property received for transportation or storage.
- § 582. Bill of lading or receipt issued by warehouseman.
- § 583. Property demanded by process of law.

577. Every person, being the master, owner, or agent of any vessel, or officer or agent of any railroad, express, or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express, or transportation company, or other carrier, unless the same has

ment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

See Civ. Code, § 1814.

579 No person can be convicted of an offense under the last two sections by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew that such marks, labels, or brands were untrue.

See Civ. Code, § 1817.

580 Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

See Civ. Code, § 2130.

581. Every person mentioned in this chapter, who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

See Pol. Code, §§ 3152-3157.

582 of said Code is repealed. [Approved March 30th, in effect July 1st, 1874.

See Civ. Code, §§ 2127, 2129.

583. The last two sections do not apply where property is demanded or sold by virtue of process of law.

CHAPTER XV.

MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS,
BRIDGES, AND TELEGRAPHS.

- § 587. Injuries to railroads and railroad bridges.
- § 588. Injuries to highways, private ways, and bridges.
- § 589. Injuries to toll-houses and gates.
- § 590. Injuries to milestones and guide-boards.
- § 591. Injuring telegraph lines.
- § 592. Taking water from or obstructing canals.

587. Every person who maliciously, either—

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branch-way, switch, turnout, bridge, viaduct, culvert, embankment, station-house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2 Places any obstruction upon the rails or track of any

public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year.

589. Every person who maliciously injures or destroys any toll-house or turnpike gate, is guilty of a misdemeanor.

590. Every person who maliciously removes or injures any mile-board, post, or stone, or guide-post, or any inscription on such, erected upon any highway, is guilty of misdemeanor.

591. Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

592. Every person who shall without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume, or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining, or domestic uses, or who shall, without like authority, raise lower, or otherwise disturb any gate or other appurtenance thereof used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed into any such canal, ditch, flume, or reservoir, any rubbish, filth, or obstruction to the free flow of the water, is guilty of a misdemeanor. [Approved April 1st, 1878.]

TITLE XIV.

Malicious Mischief.

- § 594. Malicious mischief in general, defined.
- § 595. Specifications in following sections not restrictive of intention.
- § 596. Poisoning cattle.
- § 597. Killing, maiming, or torturing animals.
- § 598. Killing, etc., birds in cemeteries.
- § 599. Killing seals. [Repealed.]
- § 600. Burning buildings, etc., not the subject of arson.
- § 601. Using gunpowder, etc., in destroying or injuring any building.
- § 602. Malicious injuries to freehold.
- § 603. Limitation upon the operations of the preceding section.
- § 604. Injuries to standing crops, etc.
- § 605. Removing, defacing, or altering landmarks.
- § 606. Destroying or injuring jails.
- § 607. Destroying or injuring bridges, dams, etc.
- § 608. Burning or injuring rafts. Setting adrift vessels.
- § 609. Removing buoys and beacons.
- § 610. Masking or removing signals, or exhibiting false lights.

595. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section.

596. Every person who willfully administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the State prison not exceeding three years, or in the county jail not exceeding one year, and a fine not exceeding five hundred dollars.

Hens.—Though hens are not beasts, yet poisoning them is indictable—108 Mass. 304, 1 Dall. 328.

597 Every person who maliciously kills, maims, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Cruelty to animals.—A public and scandalous cruelty to animals is an indictable offense distinct from malicious injury to animals—3 Rand. 489, whether inflicted by the owner or another—7 Allen 5, 2 Cranch C. C. 28, 411 443; 44 N. H. 392, 24 Ga. 196, 1 Aiken, 256 7 Law Reporter N. S. 89. It has been made a statutory offense, 7 Allen, 59, 48 How. Pr. 435, 161 Mass. 34, 153 id. 458, 22 Mass. 271, see 111 Mass. 408; 4 Hun, 44, 16 Abb. Pr. N. S. 73. Wanton cruelty to animals, whether his own or those of another, is indictable at common law—2 Cranch C. C. 289; 1 Aiken, 226, 7 Law Reporter N. S. 89, 4 Cranch C. C. 423, 44 N. H. 392, 28 Ga. 196. See Pen. Code, § 17, subd. 8.

Malicious mischief.—A malicious injury to any beast, which may be the property of another, is indictable—3 Gratt. 708, 3 Vt. 344, 13 Wend. 41, but see 3 Tex. 3, 5 Dana, 277, as, for maliciously driving cattle from their range, 43 Tex. 467, 4 Tex. Ct. App. 549. Cattle includes asses—1 Moody C. C. 3, cows—5 Cowen, 258, 1 Miss. 54, 1 D. R. 25; geldings—1 Leach 73, pigs—4 Leigh 66, 40 Miss. 331, Russ. & R. C. C. 71, steers—1 D. V. & B. 30, 20 Vt. 537, 1 Reg. 10 Iowa, 115, 21 Wal. 306, 1 Leach, 73, and horses, mares, and colts—1 Dall. 345, 5 Cowen, 254 29 Vt. 337, 22 Mo. 422, 1 Leach, 72, 2 East P. C. 1076. Tame buffaloes are not cattle—23 Mo. 457.

Malicious injury to animals.—A malicious injury to animals is indictable—4 Cranch C. C. 480, 23 Ga. 196, 26 Ohio St. 156, 3 Met. 22 3 Denio 27, 41 N. H. 32. Maiming or wounding an animal without killing it has been held not indictable at common law—3 D. R. 25, 2 N. C. 10, 2 East P. C. 1074, 104, 1 Wal. 4, 1 C. C. 11, 1 it it is an offense to commit a wrong to shoot or wound stock found trespassing on a farm—180. It is a distinct offense from the wanton and malicious killing of animals—7 Tex. Ct. App. 53, id. 6. That the crime was trespassing is no defense—313, 60, but the malice may be negatived by showing that the trespassing animal was vicious and dangerous.

ous to drive out—19 Ill. 60, 30 Ga. 325; 6 Jones (N. C.) 276, 3 Cox C. O. 503. In maliciously wounding a horse it is not necessary to prove the use of an instrument—11 Cox C. C. 125; a permanent injury must be inflicted—1 Car. & K. 55, so, pouring ash l. to the eyes of a mare and blinding her is in fact a—1 McCoy C. C. 25. The wilful disfigurement or maiming a person in her eye—8 Bush, 1, 8 C. 1 Green C. R. 293. The word wound must be taken in its ordinary sense—Law R. 1 C. C. 13. Slaying the mane a mare, pulling the tail was held not a disfigurement—Cheves S. C. 15, *contra* 2 Humph. 30, but pulling a nail into the frog of a horse's hoof is a maiming, even if curable—Russ. & R. 15.

Malicious killing.—It is indictable to maliciously and wilfully kill animals of another with intent to injure him—3 Tex. Ct. App. 318 Bush, 1, 8 C. 1 Green C. R. 293, or to wantonly kill an animal where the effect is to disturb and molest a family—1 Gratt. 708. To destroy the horse of another is an indictable offense—1 Bull. 335, 1 Terr. 303, but see 11 Humph. 233, 11 240. Killing a horse with malice toward the owner constitutes the offense, though there be no malice toward the owner—Hesk. 202, S. C. 1 Green C. R. 53. So, killing a dog in defendant's crop, if the fence is not dog-proof, is an offense—3 Tex. Ct. App. 28. Dogs are protected—13 Tex. 13, 21 Ill. 377, 34 N. H. 523, but not in Vermont—1 Gratt. 617. As to South Carolina, the question is still in doubt—14 Rec. 203, but going to a porch and shooting a dog, to the terror of the people, is indictable—8 Gratt. 708. What a dog has previously done is no defense for wantonly killing him, when not in *flagrante delicto*—5 Tex. Ct. App. 415.

598. Every person who, within any public cemetery or burying-ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.

599. That section five hundred and ninety-nine of the Penal Code is hereby repealed. [In effect March 12th, 1880.]

600 Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars or any building, snow-shed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass, or tree, or any fence, not the property of such person, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

Burning. Where a landlord burned shocks of corn on the land after the expiration of the lease, it was held malicious mischief—81 Ill. 48. Destroying a hay barn, stack, crib, rack, or stack, is not a misdemeanor—16 Ill. 24, 8, of setting fire to barrels of tar belonging to another person—3 Hawks, 45.

601 Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys,

throws down, or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of felony.

602. Every person who willfully commits any trespass by either—

1. Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another; or,

2. Carrying away any kind of wood or timber lying on such lands; or,

3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or

5. Digging, taking, or carrying away from any land in any of the cities of the State, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park without the license of

—unless such acts are committed upon swamp and overflowed, tide, salt marsh, or school lands belonging to the State, or within the limits of the lands granted by the United States to this State by Act of Congress of June thirteenth, eighteen hundred and sixty-four, relating to the Yosemite Valley and Mariposa Big Tree Grove

The Yosemite Valley grant was not in the nature of a trust. 6 Pac. Coast L. J. 109. It was a dedication to public use, brought about by the combined action of the Federal and State governments—*id.*

604. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code, is guilty of a misdemeanor.

605. Every person who either—

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, or a place where a subaqueous telegraph cable lies; or,

2. Maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

—is guilty of a misdemeanor.

Landmarks—see 2 Halst. 426; 3 Leigh, 719.

606. Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, and by imprisonment in the State prison not exceeding five years.

607. Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, res-

lamation, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them, or willfully or maliciously makes or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground for the purpose of securing any sea-bank, or sea-walls, or any dock, quay, or jetty, lock or sea-wall: or who, between the first day of October and the fifteenth day of April of each year, plows up or loosens the soil in the bed or on the sides of any natural water-course or channel, without removing such soil within twenty-four hours from such water-course or channel; or who, between the fifteenth day of April and the first day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural water-course or channel, and shall not remove therefrom the soil so plowed up, or loosened before the first day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding two years, or by both; *provided*, that nothing in this section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such water-course or channel, for the purpose of mining. [In effect April 12th, 1880.]

The Act of April 12th, 1880, amended this section by making the offense punishable as a misdemeanor—6 Pac. Coast L. J. 727, but, notwithstanding the repeal of the punishment, a prosecution for a felony committed before the repeal could be maintained, according to § 323 of the Political Code, but by indictment, not information—6 Pac. Coast L. J. 727.

608. Every person who willfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, the property of another, is punishable by fine not exceeding five hundred

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dollars, or by imprisonment in the county jail not exceeding six months.

Maliciously breaking up a boat—19 Wend. 420.

609. Every person who willfully removes any buoy or beacon, placed in any waters within this State by lawful authority, is guilty of a misdemeanor.

610. Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment in the State prison not less than three nor more than ten years.

611. Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor.

612. Every person who throws, deposits, or permits another in his employ to throw or deposit, any sawdust, slabs or refuse lumber, in any place where it may be carried or fall into the waters of Humboldt Bay, without first having constructed piers, bulkheads, dams, or other contrivances, approved by the Board of Supervisors of Humboldt County, to prevent the same from escaping into the channels of such bay, is guilty of a misdemeanor.

613. Every person who, within the anchorage of any port, harbor, or cove of this State, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel the ballast, or any part thereof, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to the navigation thereof, is guilty of a misdemeanor.

614. Every person mooring any vessel to or hanging on with a vessel to any buoy or beacon, placed by competent authority in any navigable waters of this State, is guilty of a misdemeanor.

615. Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance

thereto, placed, erected, or used by persons engaged in the United States Coast Survey, is guilty of a misdemeanor.

616. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or of this State, or any proclamation, advertisement, or notification set up at any place in this State, by authority of any law of the United States or of this State, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

Tearing down advertisements and not putting them up again is within the statute—Addis. 267; 66 Ill. 210.

617. Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the State prison for not less than one nor more than five years.

Malicious destruction of records of a police court—22 Up. Can. C P. 246.

618. Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

619. Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars,

or by both fine and imprisonment. [Approved April 15th, 1880.]

620. Every person who willfully alters the purport, effect, or meaning of a telegraphic message to the injury of another, is punishable as provided in the preceding section.

621. Every person not connected with any telegraph office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in section six hundred and nineteen.

622. Every person, not the owner thereof, who willfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town, or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

623. Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, or mechanics, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of felony.

624. Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

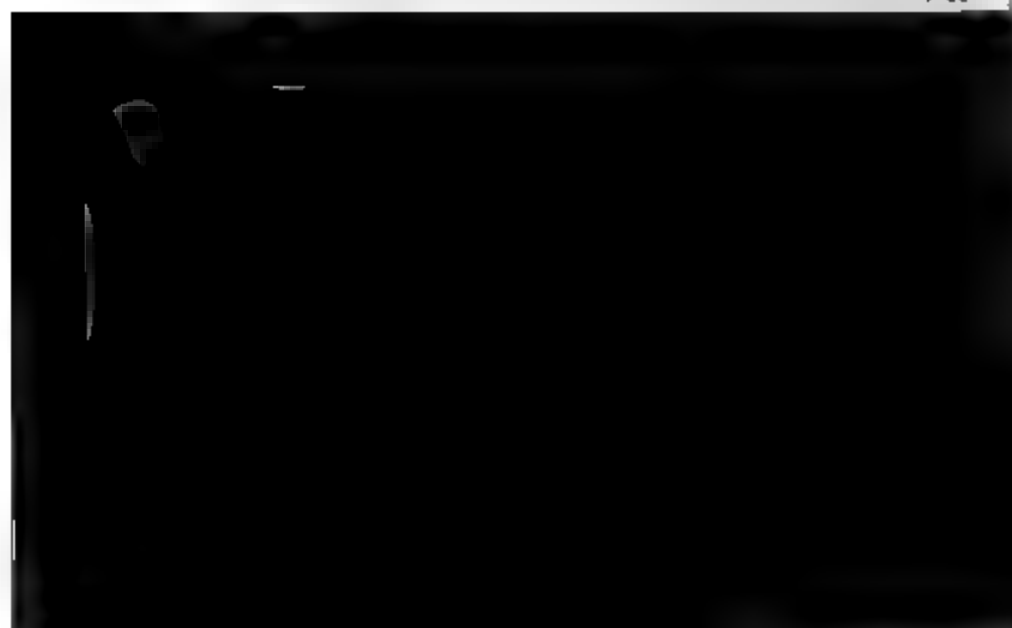
625. Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stop-cock or faucet by which the flow of water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor.

TITLE XV.

Miscellaneous Crimes.

CHAP. I. VIOLATION OF THE LAWS FOR THE PRESERVA-
TION OF GAME AND FISH, §§ 626-37.

II. OF OTHER AND MISCELLANEOUS OFFENSES, §§



CHAPTER I.

VIOLATION OF THE LAWS FOR THE PRESERVATION OF
GAME AND FISH

- § 626. Destruction of grouse, ducks, etc., when prohibited.
- § 627. Repealed.
- § 628. Destruction of elk, etc., repealed.
- § 629. Having game in possession, repealed.
- § 630. Use of phosphorus on land in certain counties.
- § 631. Quail, partridge, or grouse.
- § 632. Taking trout by nets, etc., prohibited.
- § 633. Limit of time for taking trout.
- § 634. Taking salmon when prohibited.
- § 635. Use of explosives or substances in fishing prohibited.
- § 636. Permanent contrivances for catching.
- § 637. Fishways and ladders, penalties for not keeping.

626. Every person who, in the State of California, between the first day of March and the tenth day of September in each year, hunts, pursues, takes, kills, or destroys quail, partridges, or grouse, or rail, is guilty of a misdemeanor. Every person who, in any of the counties of this State, at any time takes, gathers, or destroys the eggs of any quail, partridge, or grouse, is guilty of a misdemeanor. Every person who, in this State, between the first day of January and the first day of June in each year, hunts, pursues, takes, kills, or destroys doves, is guilty of a misdemeanor. Every person who, between the fifteenth day of December in each year and the first day of July in the following year, hunts, pursues, takes, kills, or destroys any male antelope, deer, or buck, is guilty of a misdemeanor. Any person in the State of California who has in his possession any hides or any skins of any deer, elk, antelope, or mountain sheep, killed between the fifteenth day of December and the first day of July, is guilty of a misdemeanor. Every person

who shall at any time in the State of California, hunt, pursue, take, kill, or destroy any female antelope, elk, mountain sheep, female deer, or doe, shall be guilty of a misdemeanor. Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, is guilty of a misdemeanor. Every person who shall take, kill, or destroy any of the animals mentioned in this section at any time, unless the carcass of such animal is used or preserved by the person taking or slaying it, or is sold for food, is guilty of a misdemeanor. Every person who shall buy, sell, offer or expose for sale, transport, or have in his possession, any deer or deer skin or hide from which evidence of sex has been removed, or any of the aforesaid game, at a time when it is unlawful to kill the same, as provided by this and subsequent sections, is guilty of a misdemeanor. [In effect March 24th, 1887.]

627. Section number six hundred and twenty-seven of the Penal Code of California is hereby repealed. [Approved March 9th, 1883. In effect July 1st, 1883.]

628. Section number six hundred and twenty-eight of the Penal Code of California is hereby repealed. [Approved March 9th, 1883. In effect July 1st, 1883.]

Proof of possession of any quail, partridge, or grouse which shall not show evidence of having been taken by means other than a net or pound, shall be *prima facie* evidence, in any prosecution for a violation of the provisions of this section, that the person in whose possession such quail, partridge or grouse is found, took, killed, or destroyed the same by means of a net or pound. [Approved March 24th, 1887.]

632. Every person who, in the State of California, at any time takes or catches any trout except with hook and line, is guilty of misdemeanor. Any person or persons who shall at any time take, procure, or destroy any fish of any kind by means of explosives, is guilty of a misdemeanor. Approved March 9th 1884. In effect July 1st, 1883.

633 Every person who takes, catches, or kills any speckled trout, brook or salmon trout, or any variety of trout, between the first day of November and the first day of April in the following year, is guilty of a misdemeanor. [In effect March 30th, 1878.]

634 Every person who, between the thirty-first day of August and the first day of October of each year, takes or catches, buys, sells, or has in his possession, any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon or shad in any of the public waters of this State, at any time between sunrise of each Saturday and *sunset* of the following Sunday, is guilty of a misdemeanor. Every person who shall, for the purpose of catching shad or salmon, in any public waters of this State, use with or use any seine or net, the meshes when drawn closely together and measured *inside the knot*, less than seven and one-half inches in length is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars, or in default, *not less than one hundred days in the coun-*

ty jail. One-half of all moneys collected for fines for violation of the provisions of this chapter shall be paid to the informer, one-quarter to the District Attorney of the county in which the action is tried, and one-quarter shall be paid into the Fish Commission Fund; all other costs shall be charged and collected from the county in which the action is prosecuted. Nothing in this chapter shall prohibit the United States Fish Commissioners, or the Fish Commissioners of this State, from taking such fish as they deem necessary for the purpose of artificial hatching, at all times. [Approved March 12th, 1885.]

635. Every person who places or allows to pass into any of the waters of this State any lime, gas, tar, cocculus indicus, sawdust, or any substance deleterious to fish is guilty of a misdemeanor. And every person who uses any poisonous or explosive substances for the purpose of taking or destroying fish, is guilty of a misdemeanor. Any person who shall catch, take, or carry away any trout, or other fish, from any stream, pond, or reservoir belonging to any person or corporation, without the consent of the owner thereof, shall be guilty of a misdemeanor.

casting, extending, using, or continuing "Chinese lines," or "Chinese shrimp or bag nets," or lines of similar character, for the catching of fish in the waters of this State, is guilty of a misdemeanor. Every person who, by same or any other means, shall catch the fish of any species, and who shall not return the same immediately and alive, or who shall sell, or offer for sale, any such fish, fresh or dried, is guilty of a misdemeanor.

Every person convicted of a violation of any of the provisions of this chapter shall be punished by fine of not more than fifty dollars, and not more than three hundred dollars, or imprisonment in the county jail of the county where the offense was committed, for not less than thirty days nor more than six months, or by both such imprisonment and fine. One-third of all moneys collected for violation of the provisions of this chapter to be paid to the informer, one-third to the District Attorney of the county in which the action is prosecuted, and one-third to the Fish Commissioners of the State of California. Nothing in this chapter shall be construed to prohibit the United States Fish Commissioners or the Fish Commissioners of the State of California, from taking such fish as they shall deem necessary for the purpose of artificial hatchery, nor for any other purpose. It shall not be lawful for any person to buy or offer or expose for sale, within this State, any trout (except brook trout) less than eight inches in length. Any person violating any of the provisions of this chapter is guilty of a misdemeanor. The Board of Fish Commissioners of the several counties of this State are authorized by ordinance duly passed and published, to determine the beginning or ending of the close season named in section six hundred and twenty-six of this Code, so as to make the same conform to the needs of their respective counties, whenever, in their judgment, they deem the same advisable. [In effect March 24th, 1887.]

Every owner of a dam or other obstruction in the waters of this State, who, after being requested by the

Fish Commissioners so to do, fails to construct and keep in repair sufficient fishways or ladders on such dam or obstruction, is guilty of a misdemeanor.

CHAPTER II.

OF OTHER AND MISCELLANEOUS OFFENSES.

- § 638. Neglect or postponement of telegraphic messages.
- § 639. Employé using information from messages.
- § 640. Clandestinely learning the contents of a telegram.
- § 641. Bribing telegraph operator.
- § 642. Collecting tolls, etc., at San Francisco, without authority.
- § 643. Violations of police regulations of San Francisco harbor.
- § 644. Enticing seamen to desert.
- § 645. Harboring deserting seamen.
- § 646. Aiding apprentices to run away or harboring them.
- § 647. Vagrants.
- § 648. Issuing or circulating paper money.
- § 649. Officers of fire department issuing false certificates.
- § 650. Sending letters threatening to expose another.
- § 651. Requiring apprentices to work more than eight hours.
- § 652. National Guard failure to attend parade, obey orders, etc.
- § 653. Member of National Guard, insubordination of.
- § 654. Abuse of school teachers.

638. Every agent, operator, or employé of any telegraph office, who wilfully refuses or neglects to send any message received at such office for transmission, or wilfully postpones the same out of its order, or wilfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this State, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to fac-

itate the escape of any criminal or person accused of crime.

See Civ. Code, §§ 2161, 2182, 2207.

639. Every agent, operator, or employé of any telegraph office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employé, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the State prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

640. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in section six hundred and thirty-nine.

641. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph agent, operator, or employé to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employé any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or em-

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ployè, or uses or attempts to use any such information as obtained, is punishable as provided in section six hundred and thirty-nine

642. Every person who collects any toll, wharfage, or dockage, or lands, ships, or removes any property upon or from any portion of the water front of San Francisco, or from or upon any of the wharves, piers, or landings under the control of the Board of State Harbor Commissioners, without being by such board authorized so to do, is guilty of a misdemeanor.

See Pol. Code, §§ 2524, subd. 6; 2527, 2539, 2540.

643. Every person who violates any of the provisions of the laws of this State relating to sailor boarding-houses and shipping-offices in San Francisco, or who receives any gratuity or reward other than as therein provided, for the performance of any services under a license issued pursuant to the provisions of such laws, is guilty of a misdemeanor.

See Pol. Code, §§ 2583-2607.

644. Every person who entices seamen to desert from any vessel lying in the waters of this State, and on board of which they have shipped for a term or voyage unexpired at the time of such enticement, is guilty of a misdemeanor.

See Pol. Code, § 2602.

645. Every person who harbors or secretes any seaman, knowing him to be shipped, and with a view to persuade or enable him to desert, is guilty of a misdemeanor.

See Pol. Code, §§ 2602, 2607.

646. Every person who willfully and knowingly aids, abets, or encourages to run away, or who harbors or conceals any person bound or held to service or labor is guilty of a misdemeanor.

See Civ. Code, § 284.

647. Every person (except a California Indian) without visible means of living, who has the physical ability to work, and who does not for the space of ten days seek

employment, nor labor when employment is offered him; every healthy beggar who solicits alms as a business; every person who roams about from place to place without any lawful business, every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof, every lewd and dissolute person, who lives in and about houses of ill-fame, and every common prostitute and common drunkard, is a vagrant, and punishable by imprisonment in the county jail not exceeding ninety days.

At common law, all vagrants may be taken up and bound over to good behavior—3 Allen, 511, 2 Lea, 3 Tenn 178, 108 Mass 17; 1 McMill 503, 6 Mod 240, but there must be reasonable grounds of suspicion—14 Mo 138, 2 Ld Raym 1296, 3 Taunt. 14. A vagrant is a person who has no lawful means of support—4 Parker Cr R 61, 511 of 13. In Massachusetts, it is sufficient if he has no visible means of support—3 Allen 511, 108 Mass 17. Statutes concerning vagrants are constitutional—1 McMill 503, 4 Parker Cr R 61; and see 411 & 6, 5 Bunn 516, 14 Gray, 397, 108 Mass. 1., 65 N. C. 339, 49 Ala. 22, 51 Ga. 264, 52 Ill. 574.

Vagrancy. Statutes concerning vagrants are constitutional—1 McMill 503, 4 Parker Cr R 61, and see 411 & 6, 5 Bunn 516, 14 Gray, 397, 108 Mass. 1., 65 N. C. 339, 49 Ala. 22, 51 Ga. 264, 52 Ill. 574. A person who has no means of support and is not in good faith seeking employment is a vagrant—51 Ill. 13, 4 Parker Cr R 61, 52 Ala. 374, 80, if a person habitually mispends his time it is sufficient—3 Allen 511, 108 Mass. 17. At common law, all idle persons and vagrants may be taken up and bound over to good behavior—108 Mass. 1., 3 Allen, 511; 2 Lea, (Tenn) 178, 1 McMill 503, 6 Mod. 240, but to justify arrest, there must be reasonable grounds of suspicion—14 Mo. 138, 2 Ld. Raym. 1296, 3 Taunt. 14.

648. Every person who makes, issues, or puts in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense is guilty of a misdemeanor, and for each and every subsequent offense is guilty of felony.

See post, § 654, C. v. Code, § 351. See Const. Cal art 1v, § 35.

649 Every officer of a fire department who willfully issues, or causes to be issued, any certificate of exemption to a person not entitled thereto, is guilty of a misdemeanor.

650. Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

See *ante*, § 523.

651. Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

See Stat. 1872.

652. Every commissioned officer of the National Guard, who willfully fails to attend any parade or encampment, and every member of the National Guard who neglects or refuses to obey the lawful command of his superior on any day of parade or encampment, or to perform such military duty as may be lawfully required of him, is punishable by a fine of not less than five nor more than one hundred dollars.

See Pol. Code, §§ 1930, 2018-2030.

653. Every member of the National Guard who, when duly notified, fails to appear at a parade, or who disobeys any lawful order, or who uses disrespectful language towards his superior, or who commits any act of insubordination, is guilty of a misdemeanor.

654. Every parent, guardian, or other person, who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor. [Approved March 30th, in effect July 1st, 1874.]

TITLE XVI.

General Provisions.

- § 654. Acts made punishable by different provisions of this Code.
- § 655. Acts punishable under foreign law.
- § 656. Foreign conviction or acquittal.
- § 657. Contempts, how punishable.
- § 658. Mitigation of punishment in certain cases.
- § 659. Aiding in misdemeanor.
- § 660. Sending letters, when deemed complete.
- § 661. Removal from office for neglect of official duty.
- § 662. Omission to perform duty, when punishable.
- § 663. Attempts to commit crimes, when punishable.
- § 664. Attempts to commit crimes, how punishable.
- § 665. Restrictions upon the preceding sections.
- § 666. Second offense, how punished after conviction of former offense.
- § 667. Second offenses, how punished after conviction of attempt to commit a State prison offense.
- § 668. Foreign conviction for former offense.
- § 669. Second term of imprisonment, when to commence.
- § 670. When term of imprisonment commences, etc.
- § 671. Imprisonment for life.
- § 672. Fine may be added to imprisonment.
- § 673. Civil rights of convict suspended.
- § 674. Civil death.
- § 675. Limitations on two preceding sections.
- § 676. Person of convict protected.
- § 677. Forfeitures.
- § 678. Valuation in gold coin.

654. An act or omission which is made punishable in different ways by different provisions of this Code, may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in sections six hundred and forty-eight, six hundred and sixty-seven, and six hundred and

sixty-eight, the punishments therein prescribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment and found by the jury.

Effect of plea of guilty is to confess the offense charged, which includes the previous conviction, and defendant must be sentenced for a felony—49 Cal. 385. See *post*, § 1158.

655. An act or omission declared punishable by this Code is not less so because it is also punishable under the laws of another State, government, or country, unless the contrary is expressly declared.

Adjustment of punishment. When an offense is committed against two sovereignties, the first prosecuting absorbs it—97 U. S. 369, but when partly against one and partly against the other, the sentence of the other is to be taken into account in adjusting the sentence—see Whart. Cr. Pl. & Pr. §§ 441, 453; and the grade of offense will be considered—*id.*, Whart. Conf. of L. § 920.

656. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another State, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense.

See *post*, § 1016.

657. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

Instances.—Assault on a judge—25 La. An. 532; rescues and escapes—1 Dutch. 209; misbehavior or malpractice of officer—1 Blackf. 166, 1 Barr. 799; misconduct of inferior judges—63 Ind. 81; libelous publications of court proceedings—16 Ark. 381, 4 Ill. 405; conspiracies to obstruct justice—25 Vt. 415; 2 H. R. (S. C.) 282, 2 Pars. Cas. 351, 3 Zab. 38; 60 Ind. 465, fraud and corruption of solicitors and officers of court—1 Best. & S. 299.

658. When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

Discretion of court—See Dexty's Crim. Law, § 465.

659 Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

Accessories.—The offense of being accessory is committed in the county where the substantive acts are consummated—13 Bush, 142; 114 Mass. 307, in which county only can he be indicted—27 Cal. 340, 57 How. Pr. 342, 1 Parker Cr. R. 240, see 27 Ark. 90, 1 Ind. 471. At common law a person indicted as principal cannot be convicted on proof showing him to be an accessory, and *conversao*—40 Cal. 122, 24 Cal. 404, 41 id. 429, 39 id. 78, 32 id. 100, 12 Ark. 154, 15 Ga. 340, 52 id. 207, 30 Miss. 63, 8 N. H. 80, 49 N. H. 24, 60 N. H. 572, 31 N. J. L. 65, 83 Id. 479, Russ. & R. C. C. 13, 9 Coxe C. 247, 7 Car. & P. 353, 1 Leach 615. By statute, the offense is made substantive and independent—40 Cal. 122, 66 Ga. 90, 8 Ill. 368, 42 id. 410, 14 Ill. 52, 46 Iowa 265, 12 Kan. 350, 20 Me. 64, 126 Mass. 242, 14 Ohio St. 40, 14 Ohio 151, 25 Pa. St. 22, 12 Wis. 532, Law R. 14 C. 75, Russ. & R. C. 243, and in States where all are principals he may be indicted and convicted as principal—14 Bush, 23, 40 Iowa, 180, 42 Ill. 368, 2 Pa. St. 98, 24 id. 187, 50 Mich. 100, though the prime actor be dead or escaped—Brev. 328, Mitf. 100, and see 24 Mo. 475. In States where there is a common law jurisdiction as to crimes the accessory can only be tried jointly with or after conviction of the principal—13 Mass. 126, 16 Ill. 43, 5 Pick. 479, 126 Mass. 242, 4 McLean 37, Thacher C. C. 63, 1 Parker Cr. R. 240, 5 Watts & R. 343, 2 Va. Cas. 21, 5 Bush 698, 111 Ill. 154, 15 Fla. 50, 44 Ind. 214, and the indictment may charge him in one count as principal, and the other as accessory—48 Cal. 189. Aiders and abettors may be convicted although the principal has been acquitted—10 Cal. 60, 28 Ga. 216, 29 Mo. 32, 1 Leach 366, 2 Shaw, 70, 8 Ark. 302, Russ. & R. C. C. 314. The principal and accessory may be indicted together or separately, without reference to previous conviction or acquittal—10 Cal. 60, 20 id. 430. See *ante* § 323, and see Desty's Crim. Law, § 40 a, b, c. Punishment of accessories—see Desty's Crim. Law, § 53 b.

660 In the various cases in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any post-office or any other place, or delivered to any person, with intent that it shall be forwarded.

As to mailed labels see 1 Dall. 300, 4 Barn. & Ald. 95. Posting indecent letter—1 Hatchf. 340, see No. 1, S. 72. As to challenges to fight—3 Brev. 215, 58 Ga. 332, 1 Hawks. 407, 1 Const. S. C. 17, 2 Camp. 506, see 12 Ala. 76, and it is not necessary to prove that it ever reached its destination—2 Camp. 506. Mailing offer to bribe—1 Dall. 304.

661. In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers—State, county, city, or township—where it is not so expressly provided, they may, in the discretion of the court, be removed from office.

See Pol. Code, §§ 441 *et seq.*

662. No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

663. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the State prison for five years, or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the State prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the State prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

Attempts included in §§ 216, 217, 220-222 are not included in this section. See Desty's Crim. Law, § 12.

665. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

666. Every person who, having been convicted of any offense punishable by imprisonment in the State prison, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the State prison for any term exceeding five years, such person is punishable by imprisonment in the State prison not less than ten years.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny, or any attempt to commit an offense which, if committed, would be punishable by imprisonment in the State prison not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the State prison not exceeding five years.

Second conviction. A statute providing that a second conviction for petit larceny makes the party guilty of a felony is not *ex post facto*—45 Cal. 432, 43 Mass. 412, 3 Gratt. 738. See Const. Provisions, *ante*, page 18.

Increased punishment.—Increased punishment may be imposed for a subsequent offense—45 Cal. 430; 47 Id. 113, 3 Dal. 336, 5 Rawle, 383, 2 Pick. 168, 172, 2 Met. 413, 3 Id. 588, 9 Gratt. 743, 47 M. 1 485, 92 Ill. 647, 3 Cowen 31., 3 Met. 513, 8 Id. 553, 10 Id. 553, 11 Id. 591, 11 Pick. 28, 10 Id. 452, 21 Id. 492, 7 Serg. & R. 489, 14 Id. 67, 1 Root, 163, 91 Ala. 583, 10 Mass. 115, and this will not be putting the party twice in jeopardy, nor is it punishment for the first offense—47 Cal. 114. A mere conviction of the prior offense is sufficient without sentence—1 Hal. 261; *contra*, 4 Serg. & R. 49 and see 53 N. Y. 511, 65 Id. 512, 5 Hun, 541, 4 Kad. 372. See *ante*, § 654.

667. Every person who, having been convicted of petit larceny, or of an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State prison, commits any crime after such conviction, is punishable as follows:

1. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed, upon a conviction for such first offense.

3. If the subsequent conviction is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State prison, then such person is punishable by imprisonment in such prison not exceeding five years.

See also §§ 668, 669, 670, 671.

which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

Punishment.—Imprisonment commences on conviction and sentence—68 N. Y. 343, 6 Baxt. (Tenn.) 539. Imprisonment on a second conviction commences on a termination of the first term of sentence—22 Ca. 135, 411 1 463, 5 Day, 175, 11 Met. 581, 6 Eng. 318, 44 Mo. 279; 18 Ohio St. 46, 45 Mo. 331; 13 Pa. St. 631; 1 Va. Cas. 151; 4 Brown P. C. 389, 1 Leach, 411, Law R. 2 Q. B. 379; but see 11 Ind. 339, as in case of pardon or reversal of sentence—11 Met. 581, 9 Nev. 44, 4 Rawle, 259; 13 Gray, 6, 8.

670. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if, thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment, and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

671. Whenever any person is declared punishable for a crime by imprisonment in the State prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

Punishment for crime is and ought to be largely in the discretion of the court—56 Ga. 545; 58 Id. 200; and the question as to what is within the limits of the law is for the judicial discretion—6 Cal. 243.

672. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars, in addition to the imprisonment prescribed.

Fines in cases where the statute is silent—1 Gall. 488; see 8 Crke, 59.

673. A sentence of imprisonment in a State prison for any term less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment.

Disfranchisement.—3 Pa. St. 112; 2 Leigh, 724; 37 Ark. 400; 6 Blackl. 529; 3 Cowen, 806; 28 Ind. 291.

674. A person sentenced to imprisonment in the State prison for life is thereafter deemed civilly dead.

675. The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property. [Approved March 30th, in effect July 1st, 1874.]

676. The person of a convict sentenced to imprisonment in the State prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Convicts can be punished only according to law—24 Conn. 122; 4 Barb. 151; 42 N. H. 492; Russ. & R. O. C. 20; Leigh & O. 204; 3 Cox O. C. 449; 6 Jur. 243; and for any excess or violation of punishment those in charge are liable—10 Barn. & O. 446.

677. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this State in the nature of a deadland, or



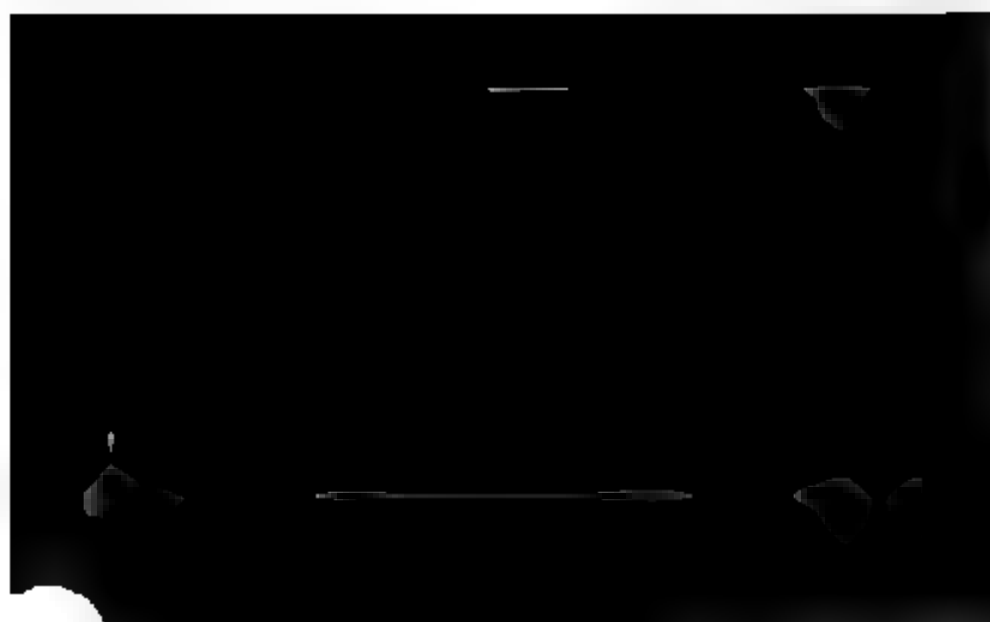
PART II.

OF CRIMINAL PROCEDURE.

(§§ 681-1570.)

PEN. CODE—34.

[277]



PRELIMINARY PROVISIONS.

- § 681. No person punishable but on legal conviction.
- § 682. Public offenses, how prosecuted.
- § 683. Criminal action defined.
- § 684. Parties to a criminal action.
- § 685. The party prosecuted known as defendant.
- § 686. Rights of defendant in a criminal action.
- § 687. Second prosecution for the same offense prohibited.
- § 688. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.
- § 689. No person to be convicted but upon verdict or judgment.

681. No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof.

See *post*, § 689; Const. Cal. art. 1, § 13.

Sentence must be preceded by conviction—18 Ark. 601; 1 Caines, 72; 34 Me. 374, but it does not always follow conviction—14 Pick. 88; 17 Id. 296, 8 Wend. 204. Summary convictions are regulated by statute—1 Parker Cr. R. 95, which must be strictly followed, unless it is merely directory—1 Ashm. 410. In summary convictions, jurisdictional facts must affirmatively appear—7 Barb. 462; 4 Johns. 292; 18 Johns. 39, 3 Me. 51, 14 Mass. 224, 10 Met. 222, 2 Yeates, 475.

682. Every public offense must be prosecuted by indictment or information, except—

1. Where proceedings are had for the removal of civil officers of the State.

2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which the State may keep, with the consent of Congress, in time of peace.

3. Offenses tried in Justices' and Police Courts. [In effect April 9th, 1880.]

Prosecution.—Neither the Constitution nor the Code prohibits the prosecution by indictment of any offense, including misdemeanors—33 Cal. 413. The County Court had jurisdiction over indictments for misdemeanor; justices of the peace being exclusive as to misdemeanors where no indictment was found—33 Cal. 412. See Const. Cal. art. 1, §§ 8, 13.

683. The proceedings by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

Criminal case means one involving punishment for crime—5 Cal. L. N. 57; 21 Int. Rev. Rec. 251; or charge for official misconduct—1 Wood, 499.

684. A criminal action is prosecuted in the name of the people of the State of California, as a party, against the person charged with the offense.

685. The party prosecuted in a criminal action is designated in this Code as the defendant.

686. In a criminal action the defendant is entitled—

1. To a speedy and public trial
2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.
3. To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of such witness may be read, upon its being satisfactory shown to the court that he is dead or insane, or cannot with due diligence be found within the State

Subd. 1. Excluding jurors summoned for the term, but not empaneled, is not deprivation of right to public trial—53 Cal. 491

Subd. 3. The deposition taken by the committing magistrate may be read in evidence on the trial, if it appears that the witness is dead, or insane, or cannot be found—50 Cal. 86, and if perjury is charged, the prosecution on the trial may prove, by parol evidence, what accused swore to at the examination—Id. The deposition taken under § 869 of this Code is not admissible against the defendant, under this section, unless taken in manner and form and is certified as required by § 869. The two sections are to be taken in pari materia—54 Cal. 57;

see post, §§ 869 and 1213, and notes. The certificate must set forth actual compliance with all requirements of the statute—6 Cal. 550, a mere jurat is not admissible—54 Id. 575. Query: Is this section constitutional?—54 Cal. 575. See Const. Cal. art. 1, § 13.

687. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

Jeopardy.—Jeopardy attaches when a party is once placed upon his trial before a competent court, on a valid indictment, and an acquittal before the jury or a discharge of the jury without consent of prisoner—4 Cal. 376, 5 Id. 218, 38 Id. 467; 48 Id. 329. 8 Blatchf. 526; 15 Ark. 261; 1 Bail. 651; 3 Brev. 421; 16 Conn. 54, 3 Cush. 212, 6 Ark. 169, 7 Ga. 422; 3 Hawks. 331; 2 Halst. 172; 17 Mass. 515, 7 Mo. 644; 19 Id. 683; 3 Smedes & M. 751; 3 Tex. 118, 1 Swan, 14, 2 Tyler, 451; 8 Wend. 640; 7 Port. 187. See Const. Prov. art. 1, § 13, *ante*, p. 17; and see Desty's Const. Cal. art. 1, § 13, and notes.

688. No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense, be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

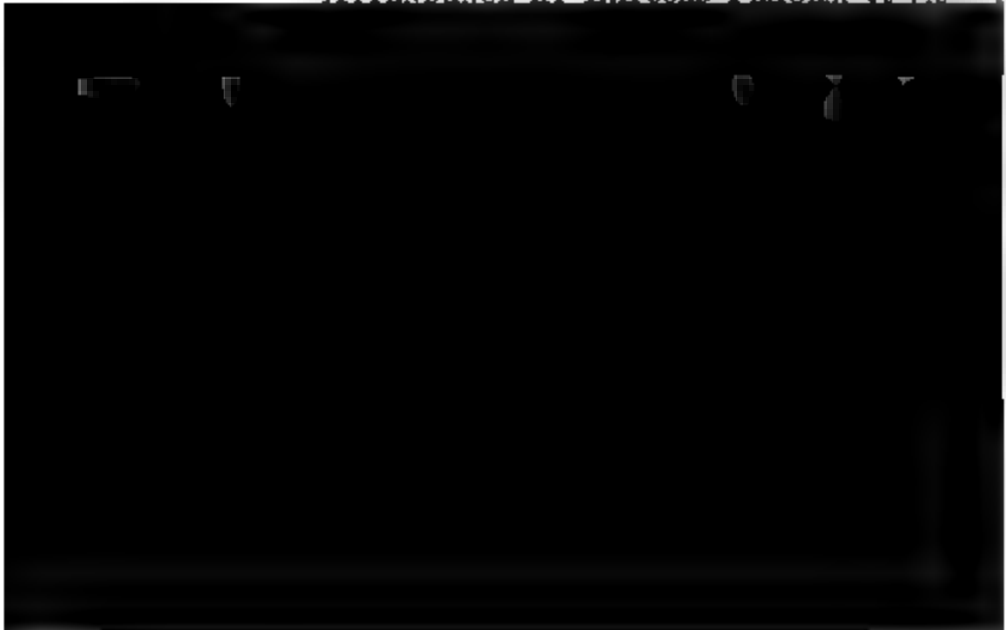
Defendant need not be a witness in his own behalf—38 Cal. 572; and his refusal, not to prejudice his case—53 Id. 66; 38 Id. 522; and see Const. Prov. *ante*, p. 18. He is to be free from shackles and bonds—42 Cal. 167. The common-law rule obtains—6 Harg. St. Tri. 230, 231, 244, 1 Leach, 36.

689. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in section one thousand and eleven, or upon a judgment of a court, a jury having been waived, in a criminal case not amounting to felony. [In effect February 25th, 1883.]

If defendant does not plead, judgment may be pronounced against him—28 Cal. 365; 29 Id. 542. See post, § 1011, and notes.

TITLE I.

Of the Prevention of Public Offenses.

- CHAP. I. OF LAWFUL RESISTANCE, §§ 692-4.
II. OF THE INTERVENTION OF THE OFFICERS OF
JUSTICE, §§ 697-8.
III. SECURITY TO KEEP THE PEACE, §§ 701-14.
IV. POLICE IN CITIES AND TOWNS, AND THEIR
ATTENDANCE AT EXPOSED PLACES. §§ 719-
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CHAPTER I.

OF LAWFUL RESISTANCE.

- § 692. Lawful resistance, by whom made.
 § 693. By the party, in what cases and to what extent.
 § 694. By other parties, in what cases.

692. Lawful resistance to the commission of a public offense may be made—

1. By the party about to be injured.
2. By other parties.

See Civ. Code, §§ 23-26, 43-50.

693. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family, or some member thereof.
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

Subd 1. Force and resistance. The right of resistance is based on necessity—23 Cal. 572. It arises where one manifestly intends to commit a felony on the person, habitation, or property of another—8 Iowa, 168, 20 Id. 569, 32 Id. 36, 8 Bush, 491, 23 Ala. 28, 8 Bush, 312, 8 Mich. 140, 18 Ga. 194, 1 Ohio St. 60, Thach O. C. 471, 3 Wash. O. C. 515, 15 Ohio St. 47. Its rules extend to the relations of parent and child, husband and wife, master and servant, and brother and sister—18 Ga. 704, 17 Ala. 587, 8 Mich. 150, 35 Ind. 492, 56 Id. 123, 30 Miss. 619, 19 Ohio St. 357, 1 Wis. 165. The law of self-defense does not require one to seek the protection of the law—3 Hun, 76, see 71 Ill. 193; 3 Hun, 716, 5 Oreg. 42, 23 N. J. Eq. 251, 65 Me. 426. See *resisting officer, ante*, § 143. See Desty's Crim. Law, § 31 and notes, § 94 g.

Subd 2. Protection of property. The law of resistance extends to the defense of the habitation—1 Car. & P. 319; and the owner may use force necessary to repel an assault—3 Cal. 341, Aldis, 246. So, an unwelcome visitor may be ejected by force, without calling in a magistrate—45 Barb. 202, 2 M. & T. 23, 6 Barb. 608, 1 Watts & S. 40, 1 Post. & F. 416. It extends to the protection of property before taken, but not to its recovery after it is taken, unless it can be retaken without undue violence—11 N. H. 540. Illegal official action may be forcibly resisted—8 Pick. 173, 11 Price, 235, see 123 Mass. 420. See Desty's Crim. Law, § 76, and notes.

Resisting trespass.—The owner of property in possession of the same may use as much force as is necessary, to prevent a forcible trespass—8 Cal. 34; but no more force than is necessary—59 A. A. 1; life cannot be taken in resistance of a mere trespass—Id. 2 Holst. 220; 4 Mass. 391; 58 Ga. 35; 23 Ala. 28, 24 Id. 67, and if life be taken, it is

CHAPTER III.

SECURITY TO KEEP THE PEACE.

- § 701. Information of threatened offense.
- § 702. Examination of complainant and witnesses.
- § 703. Warrant of arrest.
- § 704. Proceedings on charges being controverted.
- § 705. Person complained of, when to be discharged.
- § 706. Security to keep the peace, when required.
- § 707. Effect of giving or refusing to give security.
- § 708. Person committed for not giving security.
- § 709. Undertaking to be filed in clerk's office.
- § 710. Security required for assault committed in court.
- § 711. Undertaking, when broken.
- § 712. Undertaking, when and how to be prosecuted.
- § 713. Evidence of breach.
- § 714. Security for the peace.

701. An information may be laid before any of the magistrates mentioned in section eight hundred and eight, that a person has threatened to commit an offense against

ened, by the person so informed against, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the State, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

704. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

705. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

Just reason to fear—The question as to just cause to fear relates to the time of institution of proceedings—35 Ind. 379, 43 Id. 143. The statute gives no right of appeal—18 Ind. 439.

706. If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of this State, and particularly toward the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

707. If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

708. If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same.

709. The undertaking must be filed by the magistrate, in the office of the clerk of the county.

710. A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as in this chapter provided, and if he refuse to do so, may be committed as provided in section seven hundred and seven.

711. Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken.

712. Upon the district attorney's producing evidence of such conviction to the Superior Court of the county, the court must order the undertaking to be prosecuted, and the district attorney must thereupon commence an action upon it in the name of the people of this State. [In effect April 12th, 1880.]

713. In the action, the offense stated in the record of conviction must be alleged as a breach of the undertak-

CHAPTER IV.

POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT
EXPOSED PLACES.

§ 719. Organization and regulation of the police.

§ 720. Force to preserve the peace at public meetings.

719. The organization and regulation of the police, in the cities and towns of this State, is governed by special laws.

720. The mayor or other officer having the direction of the police of a city or town must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

See *ante*, § 701.

PEN. CODE.—35.

CHAPTER V.

SUPPRESSION OF RIOTS.

- § 723. Power of sheriff in overcoming resistance.
- § 724. Officer to certify to court the name of resisters, etc.
- § 725. Governor to order out military to aid in executing process.
- § 726. Magistrates and officers to command rioters to disperse.
- § 727. To arrest rioters if they do not disperse.
- § 728. Officers who may order out the military.
- § 729. Commanding officer and troops to obey the order.
- § 730. Armed force to obey orders of whom.
- § 731. Conduct of the troops.
- § 732. Governor may declare a county in a state of insurrection.
- § 733. May revoke the proclamation.

723. When a sheriff or other public officer authorized to execute process finds, or has reason to apprehend, that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

Authority to arrest.—The magistrate may not only arrest offenders, but he may authorize others to make the arrest, and may summon all citizens present to come to his aid. 4 Pa. L. J. 31, 3 Harv. & A. 100, 6 Car. & P. 254, 9 Id. 431, and to refuse to aid an officer in trying to suppress a riot, is an offense—1 Bay, 316, see 9 Mo. 268, and 4 Id. 1 Car. & M. 314. It is the duty of every citizen to endeavor to suppress a riot, and the law will, protect them in so doing—1 Yeates 41, see 3 Pa. L. J. 345, 4 Id. 31. A constable is bound to use his best endeavors to suppress an affray. 4 Car. & P. 387, 6 Id. 74, Ryan & M. 14, but he cannot arrest for an affray not done in his presence, without a warrant—same cases. A private person is not justified in arresting an affray, unless the affray is still continuing, or is about being renewed. 3 Clark & F. 28, 8 C. 11 and C. C. 17. Any person may suppress an affray, but he cannot of his own authority arrest after the affray is over. 11 Johns. 486. An officer may call on persons to aid him in the execution of his duties—1 Bay 318; 1 Harg. L. S. Reg. 263; 1 Yeates 41; 6 Whart. 437, Car. & M. 314. Peace officers—see post, § 877. See also § 697, subd. 3, §§ 701, 720.

724. The officer must certify to the court from which the process issued, the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

725. If it appears to the governor that the civil power of any county is not sufficient to enable the sheriff to execute process delivered to him, he must, upon the application of the sheriff of the county, order such portion as shall be sufficient, or the whole, if necessary, of the organized National Guard or enrolled militia of the State, to proceed to the assistance of the sheriff.

726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the State, immediately to disperse.

See *ante*, § 697, subd. 3.

727. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present, or within the county.

See *ante*, § 723, and note.

728. When there is an unlawful or riotous assembly with the intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the State or of the United States, and the fact is made known to the governor, by any justice of the Supreme Court, or the judge of the Superior Court, or sheriff of the county, or the mayor or chief of police of a city, or the president of the board of supervisors of the cities and counties of Sacramento and San Francisco, the governor may issue an order directed to the commanding officer of a division or brigade of the organized National Guard, or enrolled militia of the State, to order his command, or such part thereof as may be necessary, into active service, and to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws. [*In effect April 12th, 1860.*]

Governor may call out militia to execute laws, suppress insurrection, and repel invasion—Const. Cal. art. vii. § 1.

729. The organized National Guard or enrolled militia, or such portion thereof as shall be called into active service, as provided in section seven hundred and twenty-eight, must appear at the time and place appointed, fully armed and equipped, and with not less than forty rounds of ball cartridge to each man, if infantry or cavalry, and with not less than twenty rounds of grape, canister, or round shot, if artillery.

730. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly or arresting the offenders, and is placed under the temporary direction of any civil officer, as provided in section seven hundred and thirty-one, it must obey the orders in relation thereto of such civil officer.

731. Whenever any portion of the National Guard, or enrolled militia, shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of this State or of the United States, it shall be competent for the commander-in-chief, or for the general acting in his stead, to place such troops under the temporary direction of the mayor of any city, or of the president of the board of supervisors of the cities and counties of Sacramento and San Francisco, or the person acting in that capacity, of the sheriff of any county, or of any marshal of the United States; and if, in the opinion of such civil officer, it shall become necessary that the troops so called out shall fire or charge upon any mob or body of persons assembled to break or resist the laws, such civil officer shall give a written order to that effect to the superior officer present in command of such troops, who will at once proceed to carry out the order, and shall direct the firing and attack to cease as soon as such mob or unlawful assembly shall have been dispersed, or when ordered to do so by the proper civil authority. No officer who has been called out to sustain the

civil authorities shall, under any pretense, or in compliance with any order, fire blank cartridges upon any mob or unlawful assemblage, under penalty of being cashiered by sentence of a court-martial; provided, that nothing in this section shall be construed as prohibiting any such troops from firing or charging upon such mob or assembly without the orders of such civil officers, in case they shall first be attacked or fired upon, or forcibly resisted in discharge of their duty. When the commander-in-chief, or general acting in his stead, shall call troops into active service for the purposes mentioned in this section, and shall not place them under the temporary direction of any civil officer, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assembly.

Governor as commander-in-chief of militia—Const. Cal. art. v. § 5.

732. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officers having the process to execute it, he may, on the application of the officer, or of the district attorney, or judge of a Superior Court of the county, by proclamation, published in such papers as he may direct, declare the county to be in a state of insurrection, and may order into the service of the State such number and description of the organized National Guard, or volunteer uniformed companies, or other militia of the State, as he deems necessary, to serve for such term and under the command of such officer as he may direct. [In effect April 12th, 1880.]

733. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease at the time and in the manner directed by him.

See Const. Cal. art. v. § 5.

TITLE II.

**Of Judicial Proceedings for the Removal of Pat
Officers by Impeachment or otherwise.**

CHAP. I. OF IMPEACHMENTS, §§ 737-53.

**II. OF THE REMOVAL OF CIVIL OFFICERS OTHER
WISE THAN BY IMPEACHMENT, §§ 753-72.**

CHAPTER I.

OF IMPEACHMENTS.

- § 737. Officers liable to impeachment.
- § 738. Articles, how prepared. Trial by Senate.
- § 739. Articles of impeachment.
- § 740. Time of hearing. Service on defendant.
- § 741. Service, how made.
- § 742. Proceedings on failure to appear.
- § 743. Defendant, after appearance, may answer or demur.
- § 744. If demurrer is overruled, defendant must answer.
- § 745. Senate to be sworn.
- § 746. Two-thirds necessary to a conviction.
- § 747. Judgment on conviction, how pronounced.
- § 748. The same.
- § 749. Nature of the judgment.
- § 750. Effect of judgment of suspension.
- § 751. Impeachment disqualifies until acquittal. Vacancy, how filled.
- § 752. Presiding officer when lieutenant-governor is impeached.
- § 753. Impeachment not a bar to indictment.

737. The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice, associate justices of the Supreme Court, and judges of the Superior Courts, are liable to impeachment for any misdemeanor in office. [In effect February 18th, 1880.]

Impeachment, who subject to—Const. Cal. art. iv, § 13. While the Constitution has provided for the impeachment of certain officers, it has left all other civil officers to be tried in such manner as the Legislature may provide—45 Cal 290. A presiding judge is liable for preventing his associate from delivering his opinion—Addison's Trial, 114, 151. 8 C 4 Dal. 25, Porter's Trial, 61. Judges cannot be removed by *quo warranto*—43 Ala. 234.

738. All impeachments must be by resolution adopted, originated in, and conducted by managers elected by the Assembly, who must prepare articles of impeachment, present them at the bar of the Senate, and prosecute the same. The trial must be had before the Senate, sitting as a court of impeachment.

The trial.—A member of the House, voting for the prosecution of an impeachment, is not thereby rendered disqualified, if subsequently elected to the Senate, from sitting on the trial thereof—Addison's Trial, 21-8, Porter's Trial, 53. For an impeachment to be effectual, the articles must be presented to the Senate, and a constitutional quorum of the entire membership must receive them—12 Fla. 653. See Const. Cal. art. iv, § 17; Fed. Const. art. i, § 3, subd. 6.

739. When an officer is impeached by the Assembly for a misdemeanor in office, the articles of impeachment must be delivered to the president of the Senate.

740. The Senate must assign a day for the hearing of the impeachment, and inform the Assembly thereof. The president of the Senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

741. The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, he found within the State, the Senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeach-

744. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the Senate who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the Senate must render judgment of conviction against him. If he plead not guilty, the Senate must, at such time as it may appoint, proceed to try the impeachment.

745. At the time and place appointed, and before the Senate proceeds to act on the impeachment, the secretary must administer to the president of the Senate, and the president of the Senate to each of the members of the Senate then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the Senate can act or vote upon the impeachment, or upon any question arising thereon, without having taken such oath.

Form of oath—Chase's Trial, 12.

746. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes, and if two-thirds of the members elected do not concur in a conviction, he must be acquitted. [In effect February 18th, 1880.]

747. After conviction the Senate must, at such time as it may appoint, pronounce judgment, in the form of a resolution entered upon the journals of the Senate.

748. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the Senate.

749. The judgment may be that the defendant be suspended, or that he be removed from office and disqualified to hold any office of honor, trust, or profit, under the State. [In effect February 18th, 1880.]

A removal from office for an offense committed is a part of the judgment. 1 Leg. Gaz. 423. See Const. Cal. art. IV, § 18.


750. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

751. Whenever articles of impeachment against any officer subject to impeachment are presented to the Senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any officer other than the governor, his office must at once be temporarily filled by an appointment made by the governor, with the advice and consent of the Senate, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled at the next election, as required by law.

All the functions of the governor are entirely suspended during his trial—§ Neb. 664.

752. If the lieutenant-governor is impeached, notice of the impeachment must be immediately given to the Senate by the Assembly, that another president may be chosen.

753. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment—



CHAPTER II.

OF THE REMOVAL OF CIVIL OFFICERS OTHERWISE THAN BY IMPEACHMENT.

- § 758. Accusation to be presented by the grand jury.
- § 759. Form of accusation.
- § 760. To be transmitted to the district attorney, and copy served.
- § 761. Proceedings if defendant does not appear.
- § 762. Defendant may object to or deny the accusation.
- § 763. Form of objection.
- § 764. Manner of denial.
- § 765. If objections overruled, defendant must answer.
- § 766. Proceedings on plea of guilty, refusal to answer, etc.
- § 767. Trial by jury.
- § 768. State and defendant entitled to process for witnesses.
- § 769. Judgment upon conviction, and its form.
- § 770. Appeal, how taken. Defendant to be suspended and vacancy filled.
- § 771. Proceedings for the removal of a district attorney.
- § 772. Removal of public officers by summary proceedings.

758. An accusation in writing against any district, county, township, or municipal officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

Removal from office.—The power to remove is an incident of the power to appoint, and is made so expressly by the Constitution—7 Cal. 2d 522, 141d 715, 39 Cal 3, but it is limited to those officers whose removal is not provided for by the Constitution—2 Cal 198, 81d 291, 7 Cal. 2d 522, see 8 B. Mot 649, or declared by law—6 Cal. 291. So a constitutional officer cannot be divested of his office otherwise than as provided by the Constitution—2 Cal 198; 71d 519. The governor cannot remove a notary public before his whole term of office has expired—Cal 291, but an ex-officio tax-collector may be deprived of his office at the expiration of his term—14 Cal. 12; see 34d 16. The Legislature can abolish an office, or extend and abridge the term, at pleasure—Cal 553. See 36 Cal. 12.

Form of information and decree—see 1 Allen, 358.

759. The accusation must state the offense charged, in summary and concise language, and without repetition.

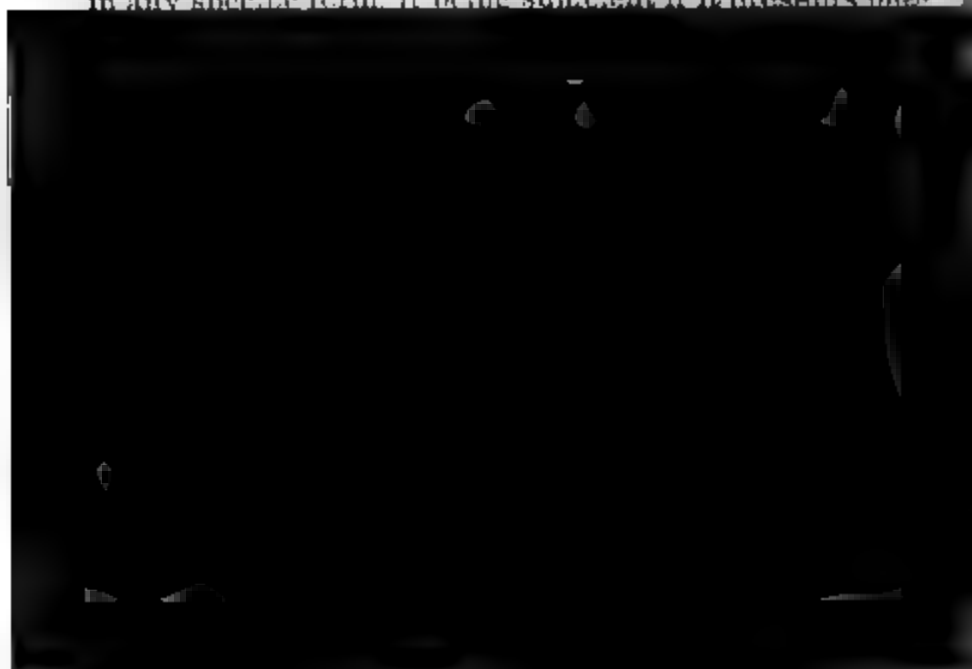
760. The accusation must be delivered by the foreman of the grand jury to the district attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten days, that he appear before the Superior Court of the county, at a time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the clerk of the court. [In effect April 13th, 1880.]

761. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

See 85 Cal. 290.

762. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

763. If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intel-



768. The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses, as upon a trial of an indictment.

769. Upon a conviction, the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein.

770. From a judgment of removal an appeal may be taken to the Supreme Court, in the same manner as from a judgment in a civil action; but until such judgment is reversed, the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy.

771. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to a judge of the Superior Court of the county, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings. [In effect April 12th, 1880.]

772. When an accusation in writing, verified by the oath of any person, is presented to a Superior Court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not more than ten nor less than five days from the time the accusation was presented, and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear, in a sum-

mary manner, the accusation, and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the court must enter a decree that the party accused be deprived of his office, and must enter a judgment for five hundred dollars in favor of the informer, and such costs as are allowed in civil cases. [In effect April 12th, 1880.]

Removal by summary proceedings.—The Legislature is invested with power to provide for the trial for misdemeanor of all civil officers, except those specified in the Constitution—45 Cal. 216, and to vest jurisdiction in such court as it may designate—*Id.* Before an officer can be removed from office and fined, under the provisions of this section, for extortion, the court must find that the fees were knowingly, willfully, or corruptly taken—50 Cal. 648. A corrupt motive is essential—4 B. Mon. 171; 1 Leigh, 709, 13 Wend. 277; 2 Doug. 426; 1 Term. Rep. 653, 22 Up. Can. Q. B. 378; though passion or party prejudice may constitute corruption—2 Term. Rep. 190. The existence of a motive may be inferred from the acts or circumstances—24 Minn. 133; 1 Salk. 380; 3 Doug. 327. See *ante*, § 518; and see Dosty's Crim. Law, § 63, *cf. seq.* Private persons have a right to institute inquiries into the conduct of office-holders—43 Cal. 239.

TITLE III.

Of the Proceedings in Criminal Actions Prosecuted by Indictment, to the Commitment, inclusive.

CHAP. I. OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES, §§ 777-95.

II. OF THE TIME OF COMMENCING CRIMINAL ACTIONS, §§ 799-803.

III. THE INFORMATION, §§ 806-9.

IV. THE WARRANT OF ARREST, §§ 811-29.

V. ARREST, BY WHOM AND HOW MADE, §§ 834-51.

VI. RETAKING AFTER AN ESCAPE OR RESCUE, §§ 854-5.

VII. EXAMINATION OF THE CASE AND DISCHARGE OF DEFENDANT, OR HOLDING HIM TO ANSWER, §§ 858-83.

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

- § 777. Jurisdiction of offenses committed in this State.
- § 778. Offenses commenced without, but consummated within this State.
- § 779. When an inhabitant of this State is concerned in a duel out of the same, and a party wounded dies therein.
- § 780. Leaving the State to evade the statute against dueling.
- § 781. Offense committed partly in one county and partly in another.
- § 782. Committed on the boundary, etc., of two or more counties.
- § 783. Jurisdiction of an offense on board a vessel or car.
- § 784. Jurisdiction for kidnapping or abduction.
- § 785. Jurisdiction of an indictment for bigamy or incest.
- § 786. Property feloniously taken in one county and brought into another.
- § 787. Jurisdiction for escaping from prison.
- § 788. Jurisdiction for treason committed out of the State.
- § 789. Jurisdiction for stealing, etc., property, out of State, and brought therein.
- § 790. Jurisdiction for murder, etc., where the injury was inflicted in

is a distinction between counterfeiting and circulating counterfeit coin—10 Law Reporter, 600. The former is an offense directly against the government, the latter is an offense against the state and may be punished by the laws of the state—12 Law Reporter, 500. See 1 Doug. 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Cannot be conferred by consent—Consent cannot confer jurisdiction to try a party for any other offense than that charged in the indictment—30 Cal. 419, 4 Parker Cr. R. 296. A party may waive objections to the jurisdiction of a criminal case—5 Ill. 285, 30, where a party voluntarily submits to the jurisdiction of a court, it will not be reversed—40 Me. 43. So where a conviction was had before *a de facie* judge, his acts are valid—17 Wis. 5. So the casual and temporary absence of one of the judges does not impair the validity of the proceedings—26 N. Y. 451.

Appellate jurisdiction. If the constitution confers appellate jurisdiction, and the mode is provided for taking the appeal, the case may be brought to a court of error or the court may frame a appropriate writ—30 Cal. 419, 31 Cal. 420, 32 Cal. 421, 33 Cal. 422, 34 Cal. 423, 35 Cal. 424, 36 Cal. 425, 37 Cal. 426, 38 Cal. 427, 39 Cal. 428, 40 Cal. 429, 41 Cal. 430, 42 Cal. 431, 43 Cal. 432, 44 Cal. 433, 45 Cal. 434, 46 Cal. 435, 47 Cal. 436, 48 Cal. 437, 49 Cal. 438, 50 Cal. 439, 51 Cal. 440, 52 Cal. 441, 53 Cal. 442, 54 Cal. 443, 55 Cal. 444, 56 Cal. 445, 57 Cal. 446, 58 Cal. 447, 59 Cal. 448, 60 Cal. 449, 61 Cal. 450, 62 Cal. 451, 63 Cal. 452, 64 Cal. 453, 65 Cal. 454, 66 Cal. 455, 67 Cal. 456, 68 Cal. 457, 69 Cal. 458, 70 Cal. 459, 71 Cal. 460, 72 Cal. 461, 73 Cal. 462, 74 Cal. 463, 75 Cal. 464, 76 Cal. 465, 77 Cal. 466, 78 Cal. 467, 79 Cal. 468, 80 Cal. 469, 81 Cal. 470, 82 Cal. 471, 83 Cal. 472, 84 Cal. 473, 85 Cal. 474, 86 Cal. 475, 87 Cal. 476, 88 Cal. 477, 89 Cal. 478, 90 Cal. 479, 91 Cal. 480, 92 Cal. 481, 93 Cal. 482, 94 Cal. 483, 95 Cal. 484, 96 Cal. 485, 97 Cal. 486, 98 Cal. 487, 99 Cal. 488, 100 Cal. 489.

Power of Legislature. The legislature may establish criminal courts in a county, but not in the Constitution, and give them jurisdiction of criminal cases—30 Cal. 419, 31 Cal. 420, 32 Cal. 421, 33 Cal. 422, 34 Cal. 423, 35 Cal. 424, 36 Cal. 425, 37 Cal. 426, 38 Cal. 427, 39 Cal. 428, 40 Cal. 429, 41 Cal. 430, 42 Cal. 431, 43 Cal. 432, 44 Cal. 433, 45 Cal. 434, 46 Cal. 435, 47 Cal. 436, 48 Cal. 437, 49 Cal. 438, 50 Cal. 439, 51 Cal. 440, 52 Cal. 441, 53 Cal. 442, 54 Cal. 443, 55 Cal. 444, 56 Cal. 445, 57 Cal. 446, 58 Cal. 447, 59 Cal. 448, 60 Cal. 449, 61 Cal. 450, 62 Cal. 451, 63 Cal. 452, 64 Cal. 453, 65 Cal. 454, 66 Cal. 455, 67 Cal. 456, 68 Cal. 457, 69 Cal. 458, 70 Cal. 459, 71 Cal. 460, 72 Cal. 461, 73 Cal. 462, 74 Cal. 463, 75 Cal. 464, 76 Cal. 465, 77 Cal. 466, 78 Cal. 467, 79 Cal. 468, 80 Cal. 469, 81 Cal. 470, 82 Cal. 471, 83 Cal. 472, 84 Cal. 473, 85 Cal. 474, 86 Cal. 475, 87 Cal. 476, 88 Cal. 477, 89 Cal. 478, 90 Cal. 479, 91 Cal. 480, 92 Cal. 481, 93 Cal. 482, 94 Cal. 483, 95 Cal. 484, 96 Cal. 485, 97 Cal. 486, 98 Cal. 487, 99 Cal. 488, 100 Cal. 489.

Courts generally. District courts have jurisdiction to punish offenders—30 Cal. 419, 31 Cal. 420, 32 Cal. 421, 33 Cal. 422, 34 Cal. 423, 35 Cal. 424, 36 Cal. 425, 37 Cal. 426, 38 Cal. 427, 39 Cal. 428, 40 Cal. 429, 41 Cal. 430, 42 Cal. 431, 43 Cal. 432, 44 Cal. 433, 45 Cal. 434, 46 Cal. 435, 47 Cal. 436, 48 Cal. 437, 49 Cal. 438, 50 Cal. 439, 51 Cal. 440, 52 Cal. 441, 53 Cal. 442, 54 Cal. 443, 55 Cal. 444, 56 Cal. 445, 57 Cal. 446, 58 Cal. 447, 59 Cal. 448, 60 Cal. 449, 61 Cal. 450, 62 Cal. 451, 63 Cal. 452, 64 Cal. 453, 65 Cal. 454, 66 Cal. 455, 67 Cal. 456, 68 Cal. 457, 69 Cal. 458, 70 Cal. 459, 71 Cal. 460, 72 Cal. 461, 73 Cal. 462, 74 Cal. 463, 75 Cal. 464, 76 Cal. 465, 77 Cal. 466, 78 Cal. 467, 79 Cal. 468, 80 Cal. 469, 81 Cal. 470, 82 Cal. 471, 83 Cal. 472, 84 Cal. 473, 85 Cal. 474, 86 Cal. 475, 87 Cal. 476, 88 Cal. 477, 89 Cal. 478, 90 Cal. 479, 91 Cal. 480, 92 Cal. 481, 93 Cal. 482, 94 Cal. 483, 95 Cal. 484, 96 Cal. 485, 97 Cal. 486, 98 Cal. 487, 99 Cal. 488, 100 Cal. 489.

concerned as second therein, out of the jurisdiction of this State, and in the duel a wound is inflicted upon a person, whereof he dies in this State, the jurisdiction of the offense is in the county where the death happens.

780 When an inhabitant of this State leaves the same for the purpose of evading the operation of the provisions of the Code relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed.

Dueling and challenges. Sending a challenge to fight out of the State is a felony—Thatch C. C. 300, 3 Brev. 243, 1 Const. S. C. 106, 1 Hawks, 457. The offense is continuous and is triable in the State where the challenge issued—58 Cal. 312, 1 Hawks, 487, 2 Camp. 506, see 12 Ala. 276, and ths, whether it reaches its destination or not—2 Camp. 506.

781. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

Concurrent jurisdiction. The place of trial is the place of the consummation of the offense—2 Barb. 427, 3 Pick. 304, 21 Wend. 533, 7 Serg. & R. 405, though a concurrent jurisdiction exists in the place of commencing the offense—2 Dall. 389, 19 Ind. 470, 17 Ark. 561, 1 Camp. 215, 211 506, 2 Low. C. 114, but attempt to commit crime are cognizable in the place of the attempt—36 Cal. 406, see 2 Cox C. C. 431, and some cases of conspiracies—2 Hawk. 74, Le Ray v. Le Post & F. 63, or in the place where an act was done by any of them in furtherance of the purpose—3 Brewst. 55, 2 Stark 46, any overt act by any of the conspirators being a renewal of the conspiracy—123 Mass. 41, 3 Brewst. 55, 48 M. 31, 22 Ind. 41, 17 Ark. 561, 13 Nev. 290, 11 Cal. 118, 7 Buss. 175, 29 Cal. 304, 54 Ala. 234, 51 Ill. 47, 83 Ill. 21, 38 Tex. & R. 100. As where one is guilty in one county for a robbery in another county—13 Nev. 290. The place of consummation is the place of trial of the crime by itself—7 Ben. 1, and in continuing money in a pretense—51 Cal. 413, see 1 D. Mass. 5. See as to "Arson" 44 Cal. 45. If a party in one county, entrusted with property of the owner, afterward takes it to another county, is not liable in the former county, unless the intent to embezzle was conceived there—51 Cal. 374. See EMBEZZLEMENT ante, § 503.

782. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

Boundary line.—A crime is perpetrated on the boundary between, if perpetrated within five hundred yards thereof—36 N. Y. 77. See as to "Arson," 44 Cal. 45.

783. When an offense is committed in this State, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this State, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates. [Approved January 28th, 1876.]

Offenses on board vessels. Congress cannot confer jurisdiction on State courts yet State courts may exercise jurisdiction in cases authorized by laws, and not prohibited by congressional legislation—5 Wheat, 27. Law Reporter, 245, see 16 Pet. 44, 50, 111, 60. As a rule offenses committed on board are cognizable by the sovereign to whom the vessel belongs—7 Cox C. C. 41, and by statutes of U. S. States. The Federal courts have jurisdiction of all offenses committed on the high seas or in any place out of the jurisdiction of a State—3 Blat. 6, 1 Cranch, 33, 1 Wash. C. C. 463, 1 Sum. 168, as in an open roadstead in a foreign country—5 Wheat 164, 5 Blat. 18. The local jurisdiction of a State extends to the distance of a cannon-shot from low water mark—7 N. Y. 265, see 12 Met. 387. A vessel is subject to the laws and control of a country it visits, 7 Mich. 161, 8 Id. 290. 9 Wash. 496, 8 C. 2 Green Cr. R. 154. Without a special statute jurisdiction over injuries upon the high seas does not exist in the Federal courts—4 Dall. 47, 1 Wash. C. C. 463, 2 Cr. 440, nor in the courts of a State—7 N. J. L. 499, 2 Va. Cas. 205. See 26 Miss. 51, 24 Me. 60. Where a crime was committed on a canal boat, it must be alleged and proved that the boat had passed through some part of the county in which the indictment is found—6 Barb. 26. Where waters where the tide ebbs and flows are inclosed by a range of islands and the main shore they are within the county—3 Parker Cr. R. 191. "Or lying therein in the prosecution of her voyage," construed—3 Blat. 309.

784 The jurisdiction of a criminal action—

1 For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this State, or to be sent out of the State, or from one county to another, or to be sold as a slave, or in any way held to service; or,

2 For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child; or,

3 For inveigling, enticing, or taking away an unmar-

ried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or,

4. For taking away any female, under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

—is in the county in which the offense is committed, or out of which the person upon whom the offense was committed may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein. [In effect April 9th, 1880.]

Subd. 1. See *ante*, § 207.

Subd. 2. See *ante*, §§ 266, 267, 278.

Subd. 3. See *ante*, §§ 266, 267, 278.

785. When the offense, either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

786. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

Property brought into another county—This section authorizes a trial in the county to which the property is brought, when the property "has been taken by larceny" in another county. 4 Pac. C. L. J. 661; but it cannot be said that a thief commits a new larceny in every county through which he passes with the stolen property—5 id. 561. Whenever an offense is begun in one county and completed in another the venue may be laid in either, so, larceny is punishable in any county in which the goods are brought. 40 Cal. 343, 43 Ill. 397, 39 Ark. 689, 17 Me. 21, 21 Ill. 13, 40 Ill. 181, 11 Cal. 483, 7 Met. 475, 9 id. 138, 10 Mass. 154, 16 N. Y. 344, 4 Parker Cr. R. 155, 11 Wend. 119, 2 Leigh 708; 1. Mich. 329, 7 Cal. 331, 47 Miss. 67, 8 Nev. 204, 80, as to embezzlement—61 Barb. 226, 11 Wend. 12, 40 Ala. 44, 3 Stew. 13; 4 Kan. 64, 1 Har. & J. 346, 12 Mo. 453, 35 Mo. 249, 3 Denison, 298, Russ. & R. C. C. 56, 3 Bos. & P. 56, 1 Int. Rep. 60 Mass. 1. But mere reception of the property does not give jurisdiction. 51 Cal. 376, without proof of the asportation. 23 Minn. 76. The rule is otherwise at common law.—14 Cox C. C. 21. See 3 Gray, 434, 9 Wend. 535.

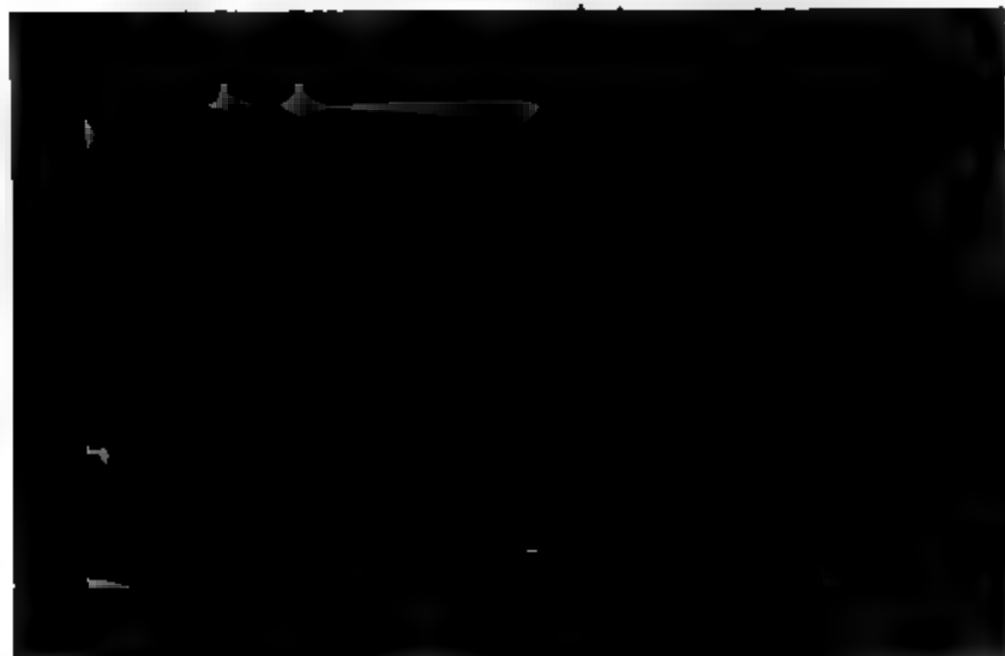
787. The jurisdiction of a criminal action for escaping from prison is in any county of the State. [In effect April 9th, 1880.]

788. The jurisdiction of a criminal action for treason, when the overt act is committed out of the State, is in any county of the State. [In effect April 9th, 1880.]

789. The jurisdiction of a criminal action for stealing in any other State the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this State, is in any county into or through which such stolen property has been brought. [In effect April 9th, 1880.]

Larceny in other State.—As between the several States, jurisdiction exists at common law in the State into which the stolen property is brought—1 Mass. 118; 3 Stewt. 133; 2 Mass. 14; 9 Gray, 7; 1 Doval, 133; 1 Hayw 100; 1 Har. & J. 340; 3 Conn. 186; 24 Mich. 184; 26 Miss. 248; 26 Ill. 173; 35 Mo. 239; 9 Nev. 49; 14 Iowa, 479; 2 Oreg. 115; 11 Ohio, 423; 20 Ohio St. 168. And in some States it is held not to exist without a statute—3 Blun. 619; 14 La. An. 278; 2 Johns. 477; id. 479; 31 N. J. L. 87; 1 Neb. 11; and such statutes are constitutional—4 Humph. 461; 15 Ind. 378; 67 Mo. 59, but see 49 Id. 181; 3 Gray, 434. See ante, § 497, and notes.

790. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death



such principal is not present at the commission of the principal offense, is in the same county it would be under this Code if he were so present and aiding and abetting therein. [In effect April 9th, 1880.]

793. When an act charged as a public offense is within the jurisdiction of another State or country, as well as of this State, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this State.

Bar to prosecution.—The district in which the trial is had must have been ascertained before the commission of the crime. 5 Blatchf. 360. Where an offense is committed against two sovereignties, the first one prosecuting absorbs it—37 U. S. 309. It is no defense that the parties were wrongfully arrested in one State and taken to another—21 Iowa, 467; see 3 Parker Cr. R. 507.

794. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

Trial as a bar.—A trial in one county is a bar to a trial in every other county—43 Ill. 327; 39 Ala. 684; 7 Cold. 331.

795. The jurisdiction of a violation of sections four hundred and twelve, four hundred and thirteen, and four hundred and fourteen of the Penal Code, or a conspiracy to violate either of said sections, is in any county, first, in which any act is done toward the commission of the offense; or, second, into, out of, or through which the offender passed to commit the offense; or, third, where the offender is arrested. [Approved March 7th, 1874.]

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

- § 799. Prosecution for murder may be commenced at any time.
- § 800. Limitation of three years in all other felonies.
- § 801. Limitation of one year in misdemeanors.
- § 802. Exception when defendant is out of the State.
- § 803. Indictment found, when presented and filed.

799. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Statute of limitations applies to offenses perpetrated before its passage as well as to subsequent offenses—3 McLean, 89, 10 46; 1 Cranch, 342; 5 Cranch C. C. 73; 2 Pars. Cas. 453, and to common-law offenses—1 Cranch C. C. 485, 2 id. 60, 3 id. 442, *contra*. 24 Tex. 61, but if it extends the time for finding an indictment, it does not apply to previous crimes—58 N. Y. 303, 57 id. 473, 55 id. 93, 1d. 495, 1d. 63 434, Y. 33; 47 id. 566, 28 id. 400, 25 id. 406, 24 id. 20; 4 U. 461, 49 Barb. 181. The statute begins to run on the day of committing the offense—26 Tex. 82. In bigamy, it runs from the bigamous marriage, unless the statutes make the crime continuous—81 Pa. St. 428, 32 Ark. 305. Continuous withholding of property is not a continuous offense—99 U. S. 459. There is no limitation within which to prosecute for murder—4 Cal. 89.

800. An indictment for any other felony than murder must be found, or an information filed, within three years after its commission. [In effect April 9th, 1880.]

See 13 Cal. 294; 44 id. 89.

801. An indictment for any misdemeanor must be found, or an information filed, within one year after its commission. [In effect April 9th, 1880.]

802. If, when the offense is committed, the defendant is out of the State, the indictment may be found or an information filed within the term herein limited after coming within the State, and no time during which the defendant is not an inhabitant of, or usually resident within this State, is part of the limitation. [In effect April 9th, 1880.]

Absence from State.—The time that the defendant may be out of the State is no part of the limitation—18 Cal. 33. So, flight or concealment suspends the running of the statute—5 Cranch C. C. 39; *Id.* 116; 57 Ind. 113; 4 Day, 123; it need not be specially pleaded—17 Wall. 168; 4 Day, 123; 3 Cranch C. C. 431; 5 *Id.* 73; 2 Low 267; 29 N. H. 274; 28 Pa. St. 259, *contra*; 5 Parker Cr. R. 231; 74 N. C. 230; 4 Ga. 345; 13 Humph. 52; 8 Ind. 494; 7 Iowa, 409. It devolves on the prosecution to show the offense within the statutory period—12 Cal. 295; 18 *Id.* 38; 1 Stewt. 318; 1 Stewt. & P. 308; 4 Day, 121; 28 Pa. St. 259; Russ. & R. C. C. 389; but the prosecution may prove, without averring it, that defendant is within the statute—17 Wall. 168; 3 McLean, 469; and see 5 Cranch C. C. 73; 39 Mo. 212; 9 Cowen, 653; 2 Pars. Cas. 453; 10 Humph. 52; 8 Blackf. 180.

803. An indictment is found within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed.

When ceases to run. After commencement of legal proceedings the statute remains silent till final judgment on the merits—3 Brewst. 394; 5 Jones, (N. C.) 221; 6 *Id.* 42; 38 Ala. 425, and dismissal of the action does not revive it—13 Bush, 142. Though indictment must be found to prevent the bar of the statute, sentence need not be within the limitation—3 Brewst. 394.

PRK. CODE—27.

CHAPTER III.

THE INFORMATION.

- § 806. Complaint defined.
- § 807. Magistrate defined.
- § 808. Who are magistrates.
- § 809. Filing information.

806. The complaint is the allegation in writing made to a court or magistrate that a person has been guilty of some designated offense. [In effect April 9th, 1880.]

Prosecutions in Federal courts.—The limitation in the Federal Constitution of prosecutions to indictments by the grand jury, applies to Federal prosecutions—24 Ala. 672, 1 Rich. 85, 30 Wis. 123, 4 Vt. 57. See Const. U. S. Amend. art. v. But crimes against the elective franchise can be prosecuted by information—see Rev. Stat. U. S. § 1072, or for misdemeanors which do not preclude the person convicted from being a witness—1 Gal. 4, 1 Cent. L. J. 205, 1 Sawyer, 701, 17 Wal. 446, 1811, 25. See 13 Wal. 531; 3 Dall. 275, 15 Bank. Reg. 225. As for violation of the revenue law—21 Int. Rev. Rec. 148. Severity of punishment does not, by itself, make a crime infamous—9 Cowen, 707, 3 Watts & S. 338, 1 Moody C. C. 34.

Prosecution in State courts.—The Code authorizes a proceeding by information only when a defendant has been examined and committed—6 Pac. C. L. J. 536. Where, after conviction upon information for grand larceny, a motion in arrest of judgment was made on the ground that the court had no jurisdiction to try the offense without an indictment, *Arrest*, properly denied—6 Pac. C. L. J. 819. Where an act reduces a felony to a misdemeanor by a repeal, notwithstanding such repeal a prosecution under it may be maintained in accordance with § 329 of the Political Code, but it must be by indictment and not by information—6 Pac. C. L. J. 727.

Extortion in office.—Any private citizen may make the complaint against an officer—45 Cal. 216. See 43 Cal. 229, see *ante*, § 101. The proceeding by information is opposed to neither the Constitution of the United States nor of this State—6 Pac. C. L. J. 528.

807. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

808. The following persons are magistrates:

1. The justices of the Supreme Court.
2. The judges of the Superior Courts.
3. Justices of the peace.

4. Police magistrates in towns or cities. [In effect March 12th, 1880.]

Subd 2. See 51 Cal. 376.

Subd 4. See 39 Cal. 708.

809. When a defendant has been examined and committed, as provided in section eight hundred and seventy-two of this Code, it shall be the duty of the district attorney, within thirty days thereafter, to file in the Superior Court of the county in which the offense is triable, an information charging the defendant with such offense. The information shall be in the name of the People of the State of California, and subscribed by the district attorney, and shall be in form like an indictment for the same offense. [In effect April 9th, 1880.]

The information. So far as its structure is concerned, the same rules apply as in case of an indictment—58 Ala. 365, 39 La. An. 50, 6 Tex. Ct. App. 26, 14 Id. 44, Law R. 2 Q. B. 40. The same certainty is required in charging offenses as in an indictment—3 Ala. 140, 14 Id. 42, 2 Id. 51, 55 Id. 4, 5 Id. 11, and indictment contained the substantial requirements of an indictment—7 Ill. 654, 4, 157. A statement will be sufficient for an exhibit or which tends to corrupt morals or shock humanity—3 Day, 103, and it must state acts of indecency or immorality. If it is for an offense created by statute, it is sufficient if it is in the language of the statute—14 Conn. 457. An information for being a common cheat must state particular acts—1 Chip. 10, 12. If it be for a first offense, it is sufficient that it is for a first offense—1 Conn. 500. If for additional punishment, it should aver previous convictions—2 Met. 408. It is sufficient to allege that the convict had been discharged by a pardon—3 Met. 403, but see 2 Id. 408. It is sufficient to allege that he informs under his official oath—Bray 172, but where it charged that he verily believed defendant committed the offense it was held and on motion to quash—1 Ind. 210. The prosecuting attorney is also authorized to amend—12 Conn. 161, 23 Id. 451, 38 N. H. 314, 1 Dana. 553, 2 Id. Rayn. 14, 1 Id. 307. There must be first a complaint supported by oath, showing probable cause, followed by arrest and examination, and a filing of the information—1 Ala. 18, 431, 1 Sawy. 70. It cannot be amended by adding charges—1 Dana. 553, and objection to its filing, or a motion to quash, may be made in case of variance with the presentment—1 Gratt. 556. They may be amended by the court, or by a judge at chambers—38 N. H. 314.

CHAPTER IV.

THE WARRANT OF ARREST.

- § 811. Examination of the prosecutor and his witnesses upon the information.
- § 812. Depositions, what to contain.
- § 813. When warrant may issue.
- § 814. Form of warrant.
- § 815. Name or description of the defendant in the warrant, and statement of the offense.
- § 816. Warrant to be directed to and executed by peace officer.
- § 817. Who are peace officers.
- § 818. To what peace officers warrants are to be directed.
- § 819. Same; and when and how executed in another county.
- § 820. Indorsement on warrant, for service in another county.
- § 821. Defendant to be taken before the magistrate issuing the warrant, etc.
- § 822. Defendant arrested for misdemeanor in another county, to be admitted to bail.
- § 823. Proceedings on taking bail from the defendant in such cases.
- § 824. When bail is not given. When magistrate who issued warrant cannot act.
- § 825. No delay in taking defendant before magistrate.
- § 826. Proceedings where defendant is taken before another magistrate.
- § 827. Proceedings for offenses triable in another county.
- § 828. Duty of officer.
- § 829. Admission to bail.

811. When an information is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Proceedings. The proceedings are regarded as continuous, unless formally adjourned—29 Mich. 173. An information not supported by oath or affirmation will not authorize a warrant of arrest—1 Abb. C. S. 431, 1 Gale & D. 454, 1 Q. B. 389. See 54 Cal. 103.

812. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

813. If the magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

814. A warrant of arrest is an order in writing, in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

COUNTY OF —.

The People of the State of California to any sheriff, constable, marshal, or policeman of said State, or of the County of —:

Information on oath having been this day laid before me, by A. B., that the crime of — (designating it) has been committed, and accusing C. D. thereof you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at —, this — day of —, eighteen —.

Before whom to be taken. In case of the absence or disability to act of the justice issuing the warrant, the prisoner shall be taken before another magistrate, and a direction to that effect must be inserted in the warrant. 19 Cal 134; 54 id. 103. The law of the State governs as to its legality—2 Watts, 165.

815. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate, with his name of office.

Validity of —It is invalid if it does not state the specific offense—1 Parker Cr. R. 104, 8 Jur 1071, 1 W. Bl 555; 2 Term Rep. 18, 8 id. 118; 9 East, 358, or if it fails to specify the defendant's name—10 Allen, 403; 1 W. Bl 555; or if it omits the christian name—1 Moody C. C. 281.


816. The warrant must be directed to and executed by a peace officer.

To whom directed—19 Wis. 300; 7 Cal. & P. 245. The officer may be described by name of his office—1 Barn. & C. 280; 3 Dowl. & R. 44.

817 A peace officer is a sheriff of a county, or a constable, marshal, or policeman of a township, city or town.

818. If a warrant is issued by a justice of the Supreme Court, or judge of a Superior Court, it may be directed generally to any sheriff, constable, marshal, or policeman in the State, and may be executed by any of those officers to whom it may be delivered. [In effect April 12th, 1880.]
See 54 Cal. 103.

819. If it is issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county; or, if the defendant is in another county, it may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the county of —" (naming the county).



magistrate who issued the warrant, or some other magistrate of the same county, as provided in section eight hundred and twenty-four

One arrested for a felony, to procure bail, must be taken before the magistrate who issued the warrant, or some other magistrate, in the same county—54 Cal. 103.

822 If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, and take bail from him accordingly.

See 54 Cal. 103. In fixing the amount of bail, the sole purpose should be to cause the appearance of accused to answer the charge. 54 Cal. 75. Admission to bail, in all but capital cases, is a right of accused—19 Cal. 541. See Const. *Pro. ante*, page 15.

823 On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

824. If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant with his return thereon indorsed and subscribed by him.

See 54 Cal. 103.

825 The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney-at-law entitled to practice in courts of record of California, may, at the request of the prisoner after such arrest, visit the person so arrested. [In effect April 9th, 1880.]

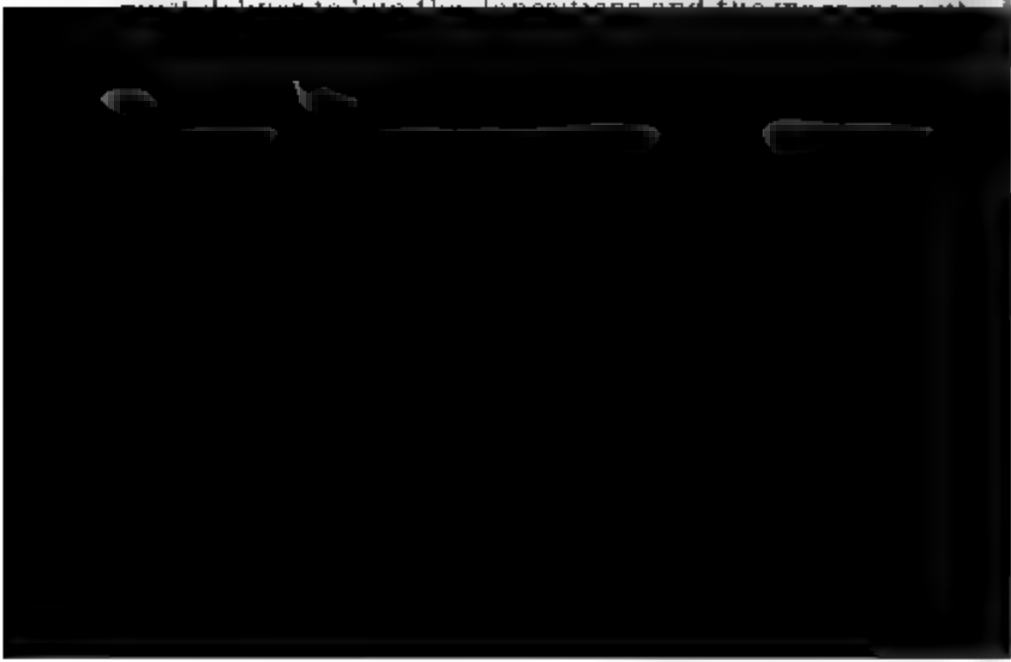
826. If the defendant is brought before a magistrate other than the one who issued the warrant, the depositions

on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

Rights of prisoner.—The only rights that he can exact are, that the affidavits shall be transmitted, or that the prosecutor and his witnesses be summoned to testify anew—18 Cal. 125.

827. When an information is laid before a magistrate of the commission of a public offense triable in another county of the State, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

828. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant.



CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

- § 834. Arrest defined. By whom made.
- § 835. How an arrest is made and what restraint allowed.
- § 836. Arrests by peace officers.
- § 837. Arrests by private persons.
- § 838. Magistrates may order arrest.
- § 839. Persons making arrest may summon assistance.
- § 840. When the arrest may be made.
- § 841. Arrest, how made.
- § 842. Warrant must be shown, when.
- § 843. What force may be used.
- § 844. Doors and windows may be broken, when.
- § 845. ~~Arrest~~
- § 846. Weapons may be taken from persons arrested.
- § 847. Duty of a private person who has made an arrest.
- § 848. Duty of officer arresting with warrant.
- § 849. Person arrested without a warrant to be taken before a magistrate. Information to be filed.
- § 850. Arrest by telegraph.
- § 851. Same.

834. An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

Arrest, when illegal. An arrest will not be avoiled by mere clerical or formal errors in the warrant—38 Mass. 4; see 40 Barb. 89, 8 Rich. 17. A warrant may be void as to the parties, but voidable only as to the officer—1 N. H. 262, 1 Lead. C. 200. When a sheriff is void, the officer cannot excuse himself—20 Vt. 37, as where it is dated on Sunday—14 Mass. 324; or where it has no seal—1 Hayw. 4.1, 36 Me. 366, 5 Ired. 71, 1 East P. C. ch. 5, § 58, but a wafer or scroll is sufficient—34 Me. 210, 9 Watts, 3.1, 49 Mo. 188; 9 Jur. 442, 7 Q. B. 232.

Validity of arrest.—To make an arrest valid, the officer must be engaged in the execution of a duty—13 Cox C. 1 202. Where an arrest is made beyond the jurisdiction of the magistrate who issued the warrant, it is illegal—65 N. C. 327, 79 Id. 605, or outside of the district of the officer—1 Conn. 40; 4 id. 107, 7 Id. 456, 4 Mass. 272. Where a fugitive was arrested in another State, though the arrest is illegal it is not ground for his discharge on *habeas corpus*—8 Pa. St. 37. See 4 Parker Cr. R. 253. Where the offense charged in the warrant is not a subject of arrest, it is illegal—20 Arb. L. J. 2.5. Where a person has been discharged by a magistrate, an officer cannot re-arrest him without

a new warrant—30 Barb. 300, disapproving 6 Hill, 349; but an officer may re-arrest a person after voluntarily releasing him—9 Met. 296.

835. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

Arrest, how made.—No manual touching is necessary—18 Ga. 301; it is sufficient if the party be within the power of the officer and submits to the arrest—1 Wend. 215; 20 Ga. 371; 18 N. H. 196; 1 Car. & P. 153; Moody & M. 244; *contra*, 2 N. H. 318; Harp. (S. C.) 433; Bald. 225; 3 Har. (Del.) 418; 1d. 568. It is the duty of the party to submit—4 Allen N. B. 440. To inform defendant that he is arrested, and to lock the door, is sufficient—Cas. t. Hardw. 284; or to inform him, and touch him only with the finger—1 Saik. 79.

836. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person—

1. For a public offense committed or attempted in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to

He cannot arrest for a crime proved or suspected, unless it be a felony—13 Cush 248; 12 G. 5. *Contra*, 5 Har (Del) 503.

Subd. 4. On charge of felony.—A peace officer on reasonable cause, on a charge of felony, can arrest without a warrant, but a private person can not. Do 12 35, 1 Lead C. C. 134, but he is now bound to arrest merely on representations that he is a thief. 5 City H. Rec. 4. Mere manner, in a man accused of crime, is not a probable cause—37 Mich. 299. Refusal to arrest see *ante*, § 14. Warrant to be directed to, and executed by, officer—see *ante*, § 818. Who are peace officers—*ante*, § 817. To what to be directed—*ante*, §§ 818, 819. Duty on arrest—§ 849.

837. A private person may arrest another—

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Subd. 1. Private persons.—It is the duty of all persons to use all lawful means to arrest one committing a breach of the peace—4 City H. Rec. 111, or an affray—1 Root, 66, but he is not justified without a warrant, unless the affray is still continuing or there is reasonable ground to apprehend its renewal—10 Clark & F. 28, 8 C. 1 Lead C. C. 177. But a private person cannot, of his own authority, after an affray or breach of the peace—11 Johns. 486. For misdemeanors, after their commission, an arrest can only be made on a warrant—3 Parker Cr. R. 249.

Subd. 2. For felony.—A private person may arrest, without warrant, one who has committed a felony—1 Wheel. C. C. 161; 3 Wend. 350; 11 Johns. 486, 3 Parker Cr. R. 249; 17 How Pr. 100, 12 Ga. 318; or, on suspicion, with good reason, where a crime has been actually committed—40 N. Y. 463, 3 Wend. 350, but it must be a felony which may be tried in the State—51 Barb. 91 as for an escape—49 N. H. 377.

Subd. 3. Reasonable cause.—see 40 N. Y. 463, 3 Wend. 350. May arrest on probable cause—39 N. J. L. 70, 3 Wend. 350, 8 Serg. & R. 47; 3 Binn. 316, 68 Ind. 464, 2 Dev. 58, 3 Jones. (N. C.) 434; but to justify, an offense must be in fact committed—40 N. Y. 433; 61 Pa. St. 252, 54 Barb. 490, 2 Selw. N. P. 943.

838. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

Magistrate may, on his own view, and without a warrant, arrest a party for a breach of the peace—3 City H. Rec. 95.

839. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

Duty to aid officers. It is the duty of all persons to use their exertions to detect and punish crime, but the law imposes no obligation on a private citizen, unless called on by a ministerial officer—12 Ohio, 281.

840. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, endorsed upon the warrant.

841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

Notice of arrest must be given expressly or by implication—77 Cal. 572, 32 N. Y. 309, 76 N. C. 10; 11 Coke, 65; 1 Moody C. C. 207, 1d 20, 14, 278. So a private person arresting another must notify the party of his purpose—65 N. C. 327. A constable showing his badge or a police officer is sufficient intimation of his authority—32 N. Y. 509, 1 Moon C. C. 334, but where the defendant knows the officer, it is sufficient notice—27 Cal. 53, 6 Gray, 350, 10 Mich. 169, 10 Wend. 514, 5 Har. (De) 145; 17 Ga. 184, Cro. Car. 183. Municipal officers are under the protection of the law—30 Ga. 426, but if a policeman is not known, resistance is not a crime—76 N. C. 19, 7 Tex. Ct. App. 193. He should make known his official character—2 Hill, 86. When a party is apprehended in the commission of an offense, notice of official character or cause of arrest is not necessary—27 Cal. 572.

842. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

Must show warrant.—A person arrested has a right to see the warrant unless he first resists—10 Mich. 169; 6 Gray, 350, 42 Me. 254, 13 Mass. 321, 1 Hayw. 471, 10 Wend. 514, and see 5 Har. (De) 145; 19 Ohio St. 495, and if the officer is not known he is bound to show his authority—2 Irad. 201, 1 West. (N. C.) No. 1 144. Where a violent assault is made upon the officer, notice is not required—27 Cal. 572, 1 Head 17. The officer is not bound to exhibit his warrant before securing his prisoner—6 Gray, 350, 30 Ga. 426. A regular officer within his district is not bound to show his process—2 Hill, 86.

843. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

Force may be used.—The officer must make the arrest with as little force as possible—3 Har. (Del.) 668; but all necessary force may be used—8 Wis. 132, and he will be justified in killing to prevent an escape after the actual commission of a felony—5 Parker Cr. R. 274, but wanton exercise of lawful power may be resisted—3 Houst. 605. A peace officer may arrest one fleeing, after commission of a felony, without a warrant—27 Cal. 512, or after an escape—48 N. H. 377. No a private person may arrest another on the authorization of an officer, if both be in pursuit—13 Mass. 871. An officer has a right to call in his aid any and all persons—10 Johns. 85, and for them to refuse assistance is an indictable offense—Law Rep. 1 C C 20. They must be actually or constructively under the officer's command—2 Doug. (Mich.) 1, 3 Fred. 20; 7 Eng. 50, 7 Car. & P. 776. All pursuers of a felon are protected by law—61 Pa. St. 352, 6 Cold. 283; 1 East P. C. 298. Fresh pursuit and immediate pursuit are synonymous—27 Cal. 573.

844. To make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired. [Approved March 30th, in effect July 1st, 1874.]

Breaking into house.—Before an officer with a warrant may break open doors to execute process, he must first demand admittance and be refused—10 Johns. 263, 1 N. H. 346; 1 Root, 134, id. 83; 2 Houst. (Del.) 585, 11 Gray. 194. A police officer may enter a house to suppress disorder—3 Har. (Del.) 491.

845. Any person who has lawfully entered a house for the purpose of making an arrest may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

846. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

847. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.

PEN. CODE.—§§.

Duty on making arrest.—On arresting, he may take the prisoner to the county jail, or before a justice of the peace—8 Serg. & R. G.; or other magistrate—12 Ga. 293, 318; 48 Id. 86.

848. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

Duty of officer.—The officer must follow the statute as to the magistrate to whom the party is to be delivered—110 Mass. 319.

849. When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate.

See 1 Wheel. C. C. 101; 3 Wend. 350. The pendency of one information is no bar to the presentation of another—4 Pac. C. L. J. 306.

850. A justice of the Supreme Court, or a judge of a Superior Court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers; and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it, as though he held an original warrant issued by the magistrate making the indorsement. [In effect April 12th, 1880.]

Arrest by telegraph.—An officer arresting for felony on telegraphic or other dispatch, without a warrant, must take the party at once before some examining officer—29 How. Pr. 186; and there must be reasonable diligence—Id.

851. Every officer causing telegraphic copies of warrants to be sent must certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

§ 854. May be at any time or in any place in the State.

§ 855. May break open door or window if admittance refused.

854. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the State.

See *ante*, § 834, note.

855. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling-house, if, after notice of his intention, he is refused admittance.

See *ante*, § 844.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

- § 858. Magistrate to inform the defendant of the charge, & right to counsel.
- § 859. Time to send and sending for counsel.
- § 860. Examination, when to proceed.
- § 861. When to be completed. Postponement.
- § 862. On postponement, defendant to be committed or die on bail.
- § 863. Form of commitment.
- § 864. Depositions to be read on examination and subpoenas in
- § 865. Examination of witnesses to be in presence of defendant
- § 866. Examination of defendant's witnesses.
- § 867. Exclusion and separation of witnesses.
- § 868. Who may be present at the examination.
- § 869. Testimony, how taken and authenticated.
- § 870. Deposition, by whom and how kept.
- § 871. Defendant, when and how discharged.

him, and of his right to the aid of counsel in every stage of the proceedings.

The charge mentioned in this section is not the same as the charge mentioned in § 17 of this Code—44 Cal. 657. A justice of the peace and a district judge are like constituted magistrates—39 Cal. 706. A preliminary examination cannot be waived—39 Cal. 706. The right to counsel extends only to those in custody—55 Cal. 298. On a writ of habeas corpus, the court may exact an immediate examination—32 N. J. L. 313.

859. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

See 55 Cal. 298.

860. If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case.

861. The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

Continuance.—A person arrested, charged with a crime in another State, before a demand for his surrender has been made, is entitled to his discharge if a postponement is granted longer than the statutory time—5, Cal. 298. If requisite, the hearing may be adjourned from day to day—29 Mich. 173.

862. If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this Code, as security for his appearance at the time to which the examination is postponed.

See 19 Cal. 539; ante, § 822, note.

863. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B.

having been brought before me under this warrant, is committed for examination to the sheriff of ———." If the sheriff is not present, the defendant may be committed to the custody of a peace officer.

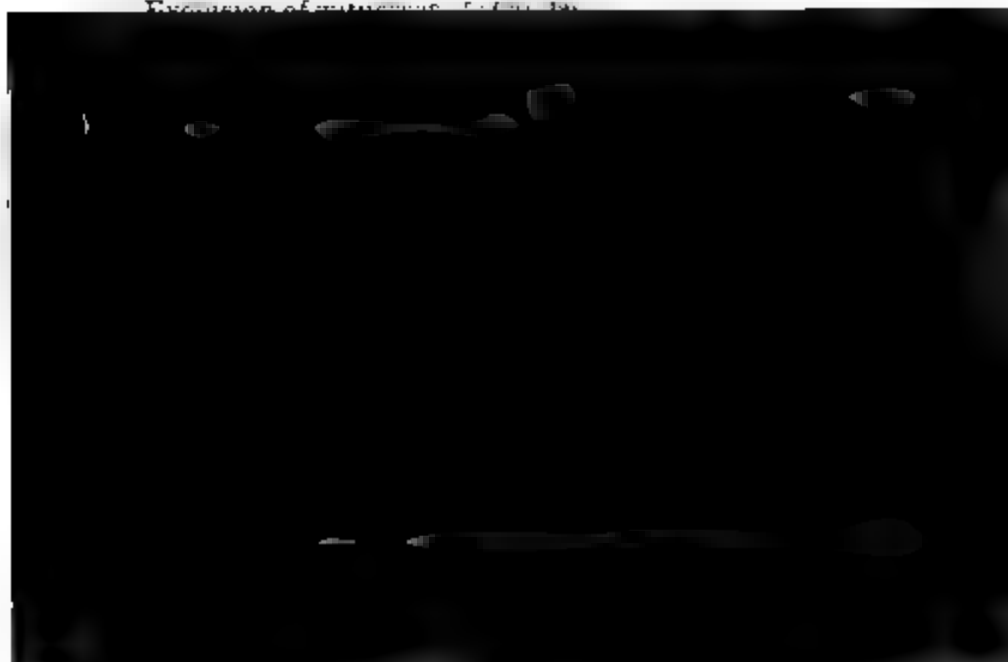
864. At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpoenas, subscribed by him, for witnesses within the State, required either by the prosecution or the defense.

865. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

866. When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined.

867. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Exclusion of witnesses. Sec. 867.



pose he may appoint a short-hand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession

2. It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth: except in cases where the testimony is taken down in short-hand, the answer or answers of the witness need not be read to him.

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it: except in cases where the deposition is taken down in short-hand, it need not be signed by the witness.

5. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in short-hand, the transcript of the reporter appointed as aforesaid, when written out in long-hand writing and certified as being a correct statement of such testimony and proceedings in the case, shall be *prima facie* a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination, (if the defendant be held to answer to the charge), transcribe into long-hand writing his said short-hand notes, and certify and file the same with the county clerk of the county, or city and county, in which the defendant was examined, and shall in all cases file his original notes with said clerk. [In effect March 3rd, 1881.]

6. The reporter's compensation shall be fixed by the magistrate before whom the examination is had, and shall

not exceed that now allowed reporters in the Superior Courts of this State, and shall be paid out of the treasury of the county, or the city and county, in which the examination is had, on the certificate and order of the said magistrate. [In effect March 14th, 1885.]

A deposition not certified by the magistrate, otherwise than by a certificate in the ordinary form is inadmissible—54 Cal. 57. The certificate must set forth actual compliance with all the requirements of the statute—6 Cal. 559. The deposition is not the only evidence—proof of perjury, best parole evidence may be introduced to prove what was sworn to on the examination—50 Cal. 96. If the magistrate erroneously excludes a question, it is no injury if the testimony was immaterial—50 Cal. 139.

870. The magistrate or his clerk must keep the depositions taken on the information or on the examination, until they are returned to the proper court; and must not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, district attorney, or other prosecuting attorney, and the defendant and his counsel.

871. If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

Order of discharge.—The order of discharge shall be reduced to writing—2 Cal. 15. The omission of the name of the accused is not such a defect as will entitle him to a discharge on habeas corpus—2 Cal. 200, 51 Id. 376, 34 Id. 109. The mere recommendation of a grand jury that the party be detained to answer before another grand jury, is not of itself good cause for detention—42 Cal. 200.

872. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the deposition an order, signed by him, to the following effect: "It appearing to me that the offense in the within depositions

mentioned, (or any offense, according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same, and committed to the sheriff of the county of —." [In effect April 15th, 1880.]

Commitment—There is no authority in the Penal Code for the waiver of examination—6 Pac. C. L. J. 528. The Penal Code authorizes proceedings by information only when defendant has been examined and committed—11. In Virginia, in cases of felony a preliminary examination is not necessary—23 Gratt. 419. That there is good cause for a commitment of accused must be left to the discretion of the court, which can not be reviewed on habeas corpus—42 Cal. 149, 150, 151, 152. If the magistrate has issued his order of discharge on the depositions and statement, or entered it in his docket, commitments may be issued until the object of the order has been accomplished—19 Cal. 137. Probable cause is sufficient—Burr's Trial, 11, 15, 16 (Pitts.) 437. What is a good cause must be determined by the particular circumstances—45 Cal. 200. If it appears that a public offense has been committed and there is sufficient cause to believe defendant is guilty, an order must be indorsed on the deposition that he be held to answer—44 Cal. 651. It is not necessary that the finding over shall be for the specific charge, if, on the hearing, the offense takes another shape—12 Kan. 111, *reversed*, 34 Mich. 288. Holding a defendant to trial is only a decision that there is a probable cause that he should be tried—35 Me. 11, 2 Ben. 336, 144, 17 Iowa, 336, 31 Mich. 236, 1 Barn. & C. 37. The District Court has jurisdiction to make an order holding accused to answer a criminal charge—51 Cal. 310. The Code authorizes a proceeding by information only when a defendant has been examined and committed—6 Pac. C. L. J. 528. See *ante*, § 809.

873. If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of —."

See 49 Cal. 651.

874. Section eight hundred and seventy-four of said Code is hereby repealed. [In effect April 15th, 1880.]

875. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order: "And that he be admitted to bail in the sum of — dollars, and is committed to the sheriff of the county of — until he gives such bail." [In effect April 15th, 1880.]

If the commitment be for an indefinite or unreasonable time, the warrant is void—see 9 Wal. 13, 10 Barn. & C. 28, 1 Man. & G. 257. See 43 Cal. 64.

Excessive bail is not to be required—37 Conn. 255. See *Const. Prov. ante*, page 15. Bail is to be taken in all but capital cases when, if the proof is strong, bail will be refused—2 Dall. 343, 8.

Pr N S 27; 24 Ark. 275, 38 Ala. 300; 94 id. 270; 5 Cowen, 39; 10 Gray, 282, 5 City H Rec. 11; 1 Halst. 332, 28 Ill. 494, 27 Ind. 87, 39 Miss. 75; 20 N H 160; 4 Parker Cr. R. 651, 25 Tex. 395, id. 519; 31 id. 586. See Const. Provisions, *ante*, page 15. The test to be adopted is the probability of the accused appearing to take his trial—2 Ashm 27, 34 Am. 270, 5 Cowen, 39; 4 Parker Cr. R. 651; 2 Pitts. 382; 19 W. & A. 676. What to one is oppressive to another is left, and of this the court is to judge—1 Cal. 9; 8 Barb. 154, 4 Parker Cr. R. 651, 4 Q. B. 408. The action of the court, unless oppressive is not revisable in error—3 Alb. Pr. N. S. 27, 33 Gr. 112, otherwise, where there is a constitutional right—30 Miss. 673. See 49 Cal. 651, 51 id. 36. Under proper and peculiar circumstances danger to life may justify release on bail—3 Wash. C. C. 224, 10 Mod. 334; 1 Salk. 103, 1 Strange, 2. See Bail, post, § 1288.

876. If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

See 49 Cal. 651; 51 Cal. 376.

877. The commitment must be to the following effect:

COUNTY OF — (as the case may be).

The People of the State of California to the Sheriff of the County of —:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this — day of —, eighteen —.

A commitment for murder must state the name of the person murdered, but the omission will not entitle accused to a discharge on habeas corpus—42 Cal. 199, and for rape, on whom it was committed, and the use of violence—49 Cal. 133. If it appear that the party is guilty, the court will not discharge him without allowing time for his arrest—2 Cal. 144. A commitment is insufficient if it fail to state the name of the party murdered, or to state that his name was unknown—42 Cal. 199, and to detain him till legally discharged—49 Cal. 651. See *ante*, § 876, note.

878. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written

undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

879. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

See ante, § 865, 869; post, § 882.

880. Infants and married women, who are material witness against the defendant, may be required to procure sureties for their appearance, as provided in the last section.

881. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

882. When, however, it satisfactorily appears by examination, on oath, of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer, in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this Code to be conducted, and the witness thereupon be discharged; but this section does not apply to an accomplice in the commission of the offense charged. [In effect March 14th, 1878.]

Deposition of witness for the people may be taken where he is unable to procure sureties—49 Cal. 38.

883. When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses, taken by him.

TITLE IV.

Of Proceedings after Commitment and before Indictment.

CHAP. I. PRELIMINARY PROVISIONS, §§ 888-90.

II. FORMATION OF THE GRAND JURY, §§ 894-910.

**III. POWERS AND DUTIES OF A GRAND JURY,
§§ 915-28.**

**IV. PRESENTMENT AND PROCEEDINGS THEREON,
§§ 931-7.**

PEN. CODE.—39.

CHAPTER I.

PRELIMINARY PROVISIONS.

§ 888. Offenses, how prosecuted.

§ 889. What by accusation or information.

§ 890. Indictments and accusations, in what court found.

888. All public offenses triable in the Superior Court must be prosecuted by indictment or information, except as provided in the next section. [In effect April 9th, 1880.]

Indictment.—Neither the Constitution nor the Penal Code prohibits prosecution, by indictment, of any criminal offense, including a misdemeanor—53 Cal. 412. Where a statute creating a felony was repealed, a felony, committed before the repeal, could, nevertheless, be prosecuted by indictment—6 Pac. C. L. J. 131.

889. When the proceedings are had for the removal of district, county, municipal, or township officers, they may be commenced by an accusation or information, in writing, as provided in sections seven hundred and fifty-eight and seven hundred and seventy-two.

CHAPTER II.

FORMATION OF THE GRAND JURY.

- § 894. Who may challenge the panel or an individual juror.
- § 895. Cause of challenge to a panel.
- § 896. Cause of challenge to an individual grand juror.
- § 897. Manner of taking and trying challenges.
- § 898. Decision upon challenges.
- § 899. Effect of allowing a challenge to a panel.
- § 900. Effect of allowing challenge to an individual juror.
- § 901. Objections can only be taken by challenge.
- § 902. Appointment of a foreman.
- § 903. Oath of foreman.
- § 904. Oath of other grand jurors.
- § 905. Charge of the court.
- § 906. Retirement of the grand jury. Discharge of.
- § 907. Special grand jury.
- § 908. Order for special grand jury.
- § 909. Order, how executed.
- § 910. Special grand jury, how formed.

894. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual juror.

Right of challenge.—If the right to challenge the panel of the grand jury be denied, the indictment is void; but it must be claimed at the time. 19 Cal. 93; 15 Id. 331; 14 Id. 568. See as to formation of grand jury—Code of Civ. Proc.

895. A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury-box of the county.
2. That notice of the drawing of the grand jury was not given.
3. That the drawing was not had in the presence of the officers designated by law.

Challenge to panel.—Irregularity in selecting and impanneling must be objected to by a challenge to the array—45 Cal. 29; 10 Blatchf. 21; 2 Wend. 314; 35 Ga. 336; 45 Miss. 683; 24 Id. 445; 60 Id. 269; 12 Sweden.

& M. 68; 7 Verg. 271; 12 Tex. 252; 1 Tex. Ct. App. 1; 8 Tex. 99. A challenge to the array must be taken before the general issue—46 Cal. 141; 73 Pa. St. 34, 30 Ohio St. 542, 73 Ill. 256, 25 Miss. 203; 45 Id. 572, 60 Mo. 91, 23 Minn. 104, 29 Ark. 165. As to practice in North Carolina—73 N. C. 457, in New York—64 N. Y. 485, 50 How. 1'r 280, in the latter State, challenge to the array is not permitted—64 N. Y. 483. This section was intended to restrict the right of challenge to the three grounds enumerated—46 Cal. 148, 3. Id. 68, and to so restrict the right is within the power of the Legislature—46 Id. 146. An objection to the format of the grand jury cannot be presented in the court below on motion to set aside the indictment—44 Cal. 45, Id. 37, 46 Id. 141. So, if the court improperly directs the coroner to serve a special venire, the defendant cannot challenge the panel on the ground that he is not qualified to serve it—49 Cal. 178; 46 Id. 154. That the officers, whose duty it was to select the jurors, were two or three weeks at it, or that one was temporarily absent, is no ground of challenge—8 Serg. & R. 335, but strong bias on the part of persons employed to draw may be a cause—2 S. C. 429.

Challenge, when taken.—Challenges to the panel, if defendant has been held to answer before that time, must be taken before the grand jury is made up and sworn—4 Cal. 569, 15 Id. 331, 1.1. 4.9, 29 Id. 469, 19 Id. 93. See 23 Cal. 632. But if he has already been held to answer by the grand jury, he may challenge the panel on his arraignment—40 Cal. 569. It must be taken before the general issue—46 Cal. 141, 29 Ark. 165, 23 Minn. 104, 45 Miss. 572, 68 Mo. 91, 73 Ill. 256, 30 Ohio St. 542; 73 Pa. St. 34.

896. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1. That he is a minor.
2. That he is an alien.
3. That he is insane.
4. That he is a prosecutor upon a charge against the defendant.
5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.
6. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging, but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such opinion, act impartially and

fairly upon the matters to be submitted to him. [Approved March 30th, in effect July 1st, 1874]

Challenge to juror—A juror may be challenged for disqualification—51 Ill. 13. The objection must be made before indictment see 2 Browne, (Pa. 325, before the jury is sworn—5 Cal. 32, 33 Ill. 443, see § 895 1st; before it is received by the court and fixed—9 Mass. 197; 2 Pick. 50, 3 Wend. 314. An *arrestus curie* may intervene an object—9 Mass. 197, yet generally the right is limited to the party accused—1 Blackf. 318, 11 B. C. 51d 75, 2 Dong. (Mich.) 418, 45 Ga. 336, 12 Mo. 404, 4 Parker Cr. R. 17, *contra*, 8 Mass. 280, 11 Ala. 57, 11d 655. After indictment an objection that a juror was an alien cannot be taken—2 Port. 100, but it may be taken by party abatement 51d 484, 71d 187; 11 Ala. 57, 45 Ill. 208, see 1 Dill 483, 2 Va. Cas. 20, 53 Ga. 73, 1 Gratt. 366, 17 Ohio, 22, 30 Ohio St. 54, but this must be before general issue is pleaded—9 Ala. 10, 11d 5, 1 Ark. 288, 12 Pa. 562, 15 Me. 104, 36 1d. 194, 45d 888, 50d 328, 2 Barb. 41, 2 Ashb. 90, 5 Gratt. 702, 1 Red. 191, 11d 98, 9 Ga. 58, 11 2d, 50d 73, 30 N. H. 216, 74 N. C. 316, 12 Vt. 427, 24 Mass. 445, 15 1d. 128, 3 Parker Cr. R. 17, 7 Verg. 271, 10 1d 527, 12 Smedes & M. 68, 8, 1 57, 11 59, 11 Tex. 261, 11d 252, see 64 Ala. 33; 12 Tex. 283, 64 N. Y. 485. That a juror has formed or expressed an opinion is a good ground for challenge—32 Cal. 68, 3 Wend. 314, 5 Cranch C. C. 407, 2 Browne, (Pa. 325, 7 Iowa, 28, 51 Me. 336, but see 40 Ill. 268, 11 Ala. 57. A challenge lies for personal interest in conflict with the defendant—8 Mass. 186, see 1 Dill 483, 82 Pa. 81 300, *contra*, 9 Tyler 478, 80, a conscientious scruple is a ground of challenge—1 Halst. 3, 5, 83, 2 Ind. 329, 2 Blackf. 40, 7 Verg. 27. But that a juror belongs to an association whose object is to detect crime, is not a ground of challenge—40 Ill. 268. The presumption is, that the court did not excuse a person as a grand juror without legal cause—32 Cal. 65, 35 1d 48.

Subs 5 and 6. See *post*, §§ 1072, 1073, 1074.

897 The challenges mentioned in the last three sections may be oral or in writing, and must be tried by the court. [Approved March 30th, in effect July 1st, 1874]

See *post*, § 1078.

898 The court must allow or disallow the challenge, and the clerk must enter its decisions upon the minutes.

See *post*, § 1083.

899. If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside.

900. If a challenge to an individual grand juror is allowed, he cannot be present or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. The grand jury must inform the court of a

violation of this section, and it is punishable by the court as a contempt.

Effect of challenge.—Where some of the jurors are rejected, the remaining grand jurors, if of the requisite number, constitute the grand jury. 54 Cal. 33. If more than one person awaits the action of the grand jury, and the jury is disqualified from acting on the case of one, it may nevertheless act on the case of the others. 32 Cal. 63, 51 id. 40. An indictment is not vitiated because one of the grand jurors challenge and excluded appears in court when the indictment is presented. 20 Cal. 46. A indictment may be legally found by thirteen out of the sixteen grand jurors impaneled. 29 Cal. 146, 5 id. 435, 54 id. 40. See post, §§ 995, 1095.

901. A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to an individual grand juror in no other mode than by challenge.

This section applies only to cases where defendant is held to answer.—4 Cal. 569.

902. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed.

Foreman—The appointment of foreman need not be entered on the minutes of the court if the indictment is indorsed by him, and returned to the court.—4 Cal. 214.

903. The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, will diligently inquire into, and true presentment make, of all public offenses against the people of this State, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in

all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." [Approved March 30th], in effect July 1st, 1874.]

Oath of foreman. The usual practice is to swear the foreman first, and then swear the others—5 Eng. 607.

904 The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God."

Form of oath. The form of oath to the grand jurors should be substantially followed—5 Eng. 607. Where one was not present when the rest were sworn, he may be sworn afterward—1 Mass. 142; and see 5 Ga. 607.

905 The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

906 The grand jury must then retire to a private room, and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the court; but, whether the business is completed or not, they are discharged by the final adjournment of the court.

907. If an offense is committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

Offense must be committed during the sitting of the court, to authorize a special grand jury—54 Cal. 40. It is competent for a judge after commencement of the session to order a special grand jury to be summoned—43 Cal. 445.

908 The order must require the sheriff to summon at least nineteen persons, qualified to serve as grand jurors, to appear at a time specified, and a copy thereof, under the seal of the court, must by the clerk be delivered to the sheriff. [In effect March 16, 1889.]

909. The sheriff must execute the order and return it, with a list of names of the persons summoned.

910. At the time appointed the list must be called over, and the names of those in attendance be written by the clerk on separate ballots and put into a box, from which a grand jury must be drawn.

Impanneling a special grand jury in accordance with §§ 236 and 341 of the Code of Civil Procedure is valid for every purpose—47 Cal. 124

CHAPTER III.

POWERS AND DUTIES OF A GRAND JURY.

- § 915. Powers of grand jury.
- § 916. Presentment defined.
- § 917. Indictment defined.
- § 918. Foreman may administer oaths.
- § 919. Evidence receivable before the grand jury.
- § 920. Grand jury not bound to hear evidence for the defendant.
- § 921. Degree of evidence to warrant indictment.
- § 922. Grand jurors must declare their knowledge as to commission of public offense.
- § 923. Must inquire into cases of persons imprisoned, etc.
- § 924. Entitled to access to public prison, etc.
- § 925. When and from whom they may ask advice, and who may be present during their sessions.
- § 926. Secrets of grand jury to be kept, except, etc.
- § 927. Grand juror not to be questioned for his conduct, except, etc.
- § 928. Duties of grand jury.

915. The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court, either by presentment or by indictment.

Powers of grand jury.—The grand jury may inquire into all offenses committed within the county not barred by the statute of limitations—14 Cal. 570. They may act on present offenses of public notoriety, and such as are within their own knowledge, or are given in charge by the court, or by the district attorney—67 Pa. St. 30, see 6 Phila. 167, 76 Pa. St. 319, 4 Parker Cr. L. 222. It is their duty to inquire into offenses in their county, whether the party is under arrest or not—3 Mo. 120, 2 Parker Cr. R. 366, 32 Me. 40, see 12 Mo. 404, 30 Id. 368, 2 Cranch C. C. 46, 4 Id. 469. A grand jury may of their own knowledge indict a person committing perjury before them—30 Mo. 368.

916. A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it.

Presentment—A presentment found not on the knowledge of any of the grand jury, but upon information delivered by others to them, shot of be a rated on plea of defendant—*State v. Lore*, 4 Humph. 23; see also 1 Hawks, 332.

917. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

The charge mentioned in this section is not the same as the charge mentioned in § 558—44 Cal. 557.

918. The foreman may administer an oath to any witness appearing before the grand jury.

Perjury may be committed in proceedings before the grand jury—41 Cal. 563, 24 Ark. 591; 4 Buckf. 355, 2 Cash 212; 8 Watts, 56; 2 Rob. (Va.) 795, 16 Conn. 457, 3 Watts, 56, 1 Car. & K. 519. See 2 Parker Cr. R. 570. The witness to be sworn, so that if his evidence is false he may be prosecuted for perjury—16 Conn. 457; 2 Parker Cr. R. 570. The foreman may administer the oath—50 Ga. 585; 77 Id. 434. See 56 Pa. St. 133. *Contra*, 5 Cold. 28.

919. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of section six hundred and eighty-six. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Depositions taken before a magistrate upon examination of accused may be used before the grand jury—4 Cal. 218. Defendant may testify before the grand jury—28 Cal. 265. No evidence taken before the grand jury can be used to invalidate the indictment—16 Conn. 457, 1 Tex. 428.

920. The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

921. The grand jury ought to find an indictment when all the evidence before them, taken together, if used

plained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

Evidence to warrant conviction.—If all the evidence before them would not warrant a conviction, they ought not to find an indictment—19 Cal. 539. The grand jury are not to determine the degree of the offense—34 Cal. 211.

922. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow-jurors, who must thereupon investigate the same.

923. The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county.

Duty to inquire into cases of prisoners.—49 Cal. 651.

924. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

925. The grand jury may, at all reasonable times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he thinks it necessary; but no other person is permitted to be present during the sessions of the grand jury except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions or giving their votes upon any matter before them.

Advice of district attorney.—1 Conn. 428, 7 Cowen, 563.

Persons excluded.—No persons are permitted to be present but the members, and witnesses actually under examination—67 Pa. St. 30; 6 Phila. 167. Any volunteer attendance or communication is a contempt.

of court—67 Pa. St. 30, 3 Pa. L. J. 443, 3 Sawy. 663; but the prisoner is entitled to be present, and ask questions of witnesses—1 Conn. 48. *Id.* 458.

926. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; but may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

Obligation of secrecy—Witnesses cannot take advantage of this obligation in a criminal prosecution against them—31 Cal. 504; 7 Fred. 101. They are not permitted to disclose the evidence taken before the grand jury—43 Me. 11, see 4 Gray, 335. A grand juror may be compelled to testify, when necessary for public justice, as to what witnesses told to—53 N. H. 434, 5 C. 2 Green C. R. 346. They are competent witnesses to prove perjury committed before them—31 Cal. 504; 11 Cush. 13; 1 Car. & K. 619; 2 Crand. 40; C. 76, 64 Me. 26; 12 Cr. 157, 108 Mass. 75, 18 Conn. 45; 4 Deane, 133, 3 Watts, 56, 2 Rev. 130; 795, 25 G. 211, 5 Blackf. 21, 4 Ind. 222, 43 Ill. 34, 7 Fred. 101, 2 H. 18, C. 1288, 20 Mass. 74, 37 Ill. 307, 27 Mo. 261, 1 Robb. 35, 1 M. & C. 6, 6 Helsk. 181, *contra*, 2 Halst. 31, but they cannot impeach their own verdict by affidavit—Char. t. R. M. 1, 1 Hawks. 344; 20 Mo. 35, 1 M. & C. 241, 41 Iowa, 311; 39 Ill. 318, nor disclose a vote on the finding of a verdict—16 Conn. 41, 4 Deane, 133, 40 Mo. 238, 40 Iowa, 311, *contra*, 5 Abb. N. C. 31, 60 Tex. 474. So, the district attorney is competent witness to prove perjury of witnesses before the grand jury—59 Ill. 34; 80 Ill. 361; but he is incompetent to testify to a vote which will impeach the verdict—13 Me. 51; 12 Vt. 483; 1 Law Reporter, 4.

927. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow-jurors.

928. It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report thereon; and if, in their judgment, the services of an expert

if necessary, they shall have power to employ one at an agreed compensation not to exceed five dollars per day, payable as other county charges. The judge, upon the impanelment of such grand jury, shall charge them especially as to their duties under this section. [In effect April 16th, 1880.]

PEN. CODE—22.

CHAPTER IV.

PRESENTMENT, AND PROCEEDINGS THEREON.

- § 931. Presentment must be by twelve grand jurors, etc.
- § 932. Must be presented to the court and filed.
- § 933. Court must direct a bench-warrant if facts constitute a public offense.
- § 934. Bench-warrant, by whom and how issued.
- § 935. Form of bench-warrant.
- § 936. Bench-warrant, how served.
- § 937. Proceedings of magistrate on defendant being brought before him.

931. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman.

See 54 Cal. 103; *post*, § 949, and note.

932. The presentment, when found, must be presented by the foreman, in presence of the grand jury, to the court, and must be filed with the clerk.

933. If the facts stated in the presentment constitute a public offense, triable in the county, the court must direct the clerk to issue a bench-warrant for the arrest of the defendant.

934. The clerk, on the application of the judge or district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench-warrant, under his signature and the seal of the court, into one or more counties.

935. The bench-warrant, upon presentment, must be substantially in the following form: County of _____. The People of the State of California to any sheriff, constable, marshal, or policeman in this State: A presentment having been made on the ____ day of _____, eight-

een ———, to the Superior Court of the County of ———, charging C. D. with the crime of ———, (designating it generally) you are therefore commanded forthwith to arrest the above named C. D., and to take him before E. F., a magistrate of this county; or, in case of his absence or inability to act, before the nearest and most accessible magistrate in this county. Given under my hand, with the seal of said court affixed, this ——— day of ———, A. D. eighteen ———. By order of the court. [Seal.] G. H., clerk. [In effect April 12th, 1880.]

A bench-warrant is sufficient, if it describes the offense generally —9 Ga. 75.

936. The bench-warrant may be served in any county, and the officer serving it must proceed thereon as upon a warrant of arrest on an information, except that when served in another county, it need not be indorsed by a magistrate of that county.

See 54 Cal. 103.

937 The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

INDICTMENT.

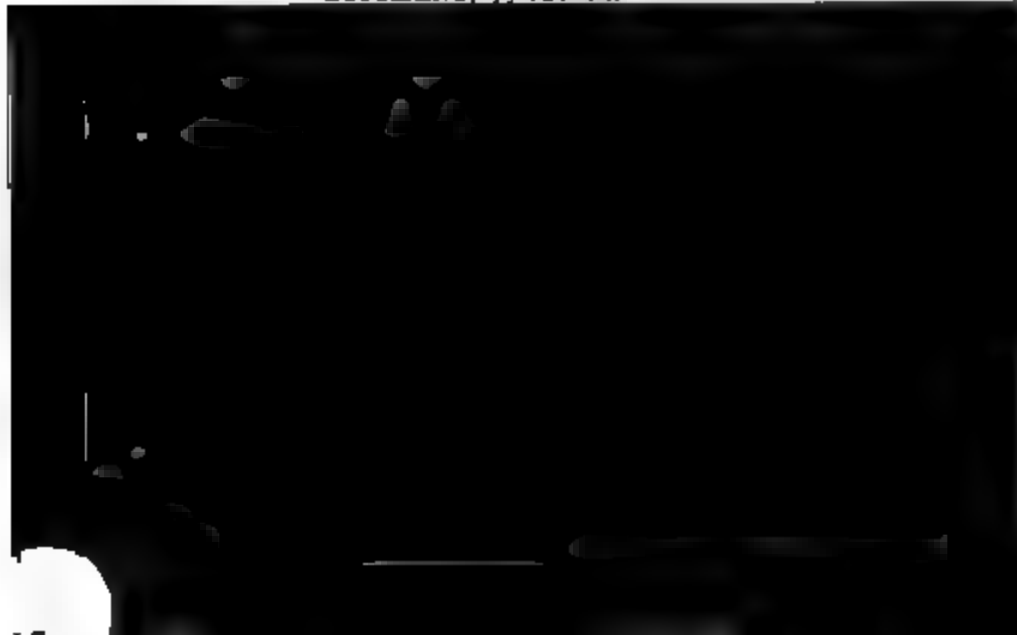
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TITLE V.

Of the Indictment.

CHAP. I. FINDING AND PRESENTMENT OF THE INDICTMENT, §§ 940-5.

II. RULES OF PLEADING AND FORM OF THE INDICTMENT, §§ 948-72.



CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

- § 940. Indictment must be found by twelve jurors, indorsed, etc.
 § 941. If not found, deposition, etc., must be returned to court, etc.
 § 942. Effect of dismissal.
 § 943. Names of witnesses inserted at foot of indictment.
 § 944. Indictment, how presented and filed.
 § 945. Proceedings when defendant is not in custody.

940. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

Concurrence. This section shows how an indictment is found—34 Cal 24. All the grand jurors need not be present at the finding of the indictment, provided twelve were present and concurring—6 Cal 25, 3 id 449, 8 Iowa, 475, 35 id 316, 24 Ohio 14, 1 Blackf 37, 8 Leigh, 722, Cro Eliz 654, 2 Burr 1008; 3 Greene 53, 4 Sappan 1 see 50 Ga. 801, 1 Utah, 31, 95 L. S. 145. An indictment found by twelve is valid although the grand jury, owing to death or absence may consist of less than nineteen at the time—54 Cal 65, id, 37, 46 id 146, see 8 Ill 46, 5 id 25. If less than twelve concur, the indictment is fatal—8 Cal 435, 28 Mo 178, 8 Leigh, 722, 2 Ives 153, 11 Simonds & M 68, Cro. Eliz 654. An indictment for murder may be found by thirteen members of a jury of sixteen persons, three having been excused by the court—5 Cal 11, approved 8 Cal 435. At common law any number from twelve to twenty-four is a legal grand jury—36 Mo 128, 2 Lad 153, 3 Humph 513, see 14 La An 82, 2 Cosh 149, 1 Blackf 317. In Missouri twelve are sufficient—36 Mo 631, but an indictment found by a grand jury of twenty-four is void—54 id 69, 6 Ad & E 235. Where nine out of twenty-four were rejected it is a legally constituted grand jury—8 Cal 440. If a finding be by less than twelve the indictment may be quashed by motion before plea—6 Aba. N. C. 33. See Code Civ. Proc. § 19, 742.

Indorsement. The usual practice is to indorse it "a true bill" signed by the foreman—2 Greene 27, 8 Humph 118, 4 Ill 8, 16 La 108; 1 Meigs, 109, 8 Mo 247, 50 Pa St 9, 12 Vr 200, though the indorsement "a bill" has been held sufficient—91 Pa St 354, 14 Mo 4, see 29 Gr 37, 294, and in some, its finding is sufficient, where the signature of the foreman is given, 91 Pa St 354, 13 N. H 488, 1 Cosh 4, 1 Gratt 846, 29 id 84, 6 Iowa, 511, 11 Minn 76, 2 Hawks, 429, 75 N. Y 168.

Signature. Where the caption and body of the indictment designates the county where it was found the name of the county need not be added to the signature of the district attorney—4 Cal 700. See 14 Cal 5. Going to trial waives the defect of want of signature—48 Cal 349. See post, § 955.

941. If twelve grand jurors do not concur in finding an indictment against a defendant who had been held to

answer, the depositions and statement, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Indorsement.—This section prescribes how an indictment must be indorsed and presented—54 Cal 38. The objection that the indictment is not indorsed must be taken by motion before entry of verdict or plea, or the defect is waived—28 Cal 272, 34 Id 308, 5 Mo 313, 2 Greene, 270, 4 Id 83, 1 Mo 133, 129, 13 Id 32, 5 Ala 332, 8 Mo 247, Id 28, 6 Dana, 280, 8 Humph 178, 25 Miss 728, 1 Morris, 332.

942 The dismissal of the charge does not prevent its resubmission to a grand jury as often as the court may direct. But without such direction it cannot be resubmitted.

Dismissal of charge.—When the grand jury has dismissed a charge, the court may dismiss the action, and discharge the jurors from custody and exonerate them from their obligations, unless it has reason to believe that the jury at the succeeding term may properly indict him—54 Cal 411. This section is to be considered in connection with § 122 of this Code—54 Cal 413.

Construction.—This section is to be considered in connection with § 122 of this Code—54 Cal 413. Upon such dismissal, the power of the court to resubmit it ceases—54 Cal 412, explaining 52 Id 463. It is in the nature of a *non est*—54 Cal 412. When an action has been dismissed, a new action may be commenced on any subsequent day—54 Cal 411. See J. KOPARBY, *ante*, page 17.

943. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Names of witnesses to be inserted before the indictment is presented to the court.—46 Cal 149. If not inserted at the foot of the indictment, or indorsed thereon, and the defendant fails to take advantage of the omission at the time of his arraignment, the objection is waived—27 Cal 348, 36 Id 112, see 6 Id 8, 21 Id 308. It is not a objection to a witness being sworn at the trial, whose name is not so indorsed—54 Cal 448, 23 Id 22, 29 Id 56, 34 Id 308, 28 Mich 46, 2 Va Cas 3, Id 29. See post, § 945. Whatever, by statute, the indorsement of the names of witnesses is required, its omission can be taken advantage of by motion to quash demurrer or plea, if not by motion in arrest—5 How (Miss) 716, 13 Smedes & M. 50, 8 Mo 68, 10 Id 167, 19 Id 224, 3 Dana, 474, 10 Yerg. 239, 3 Fla 262. *Contra*, 128 655.

Bill of particulars.—The defendant is not entitled to a bill of particulars of the evidence relied on to sustain the indictment—33 Cal 230.

944. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

Indictment, how presented.—This section prescribes the manner of presentments—54 Cal. 38. An indictment is not vitiated by the fact that one challenged and excluded from the deliberation of the case appears in the court with the other grand jurors when the indictment is presented—20 Cal. 136. If the indictment is not presented in the manner prescribed, it may be set aside on motion—46 Cal. 148. An indorsement that it was presented by the foreman of the jury, and in their presence, is not essential. This fact will be presumed—21 Cal. 268; 711 57.

To be filed—81 N. C. 516; 42 Ind. 393; 59 Ill. 68, 2 Va. Cas. 537; 3 Iowa, 249, 2 Conn. 134, 6 Ired. 440, see 5 W. Va. 513, 53 Miss. 583, 41 Tex. 463; 1 Tex. Ct. App. 664, 8 Ill. 71, 8 Verg. 166, 7 Humph. 165.

945. When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in sections nine hundred and seventy-nine to nine hundred and eighty-four, inclusive, against a defendant who fails to appear for arraignment.

Indictment may be found against one not in custody—55 Cal. 293; but if he is never arrested, the proceedings can go no further—*id.* A party arrested on a bench-warrant, on which an order is indorsed admitting him to bail, is entitled to discharge on execution of a recognizance—27 Cal. 272.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

- § 948. Form of and rules of pleading.
- § 949. First pleading by the people is indictment, or information.
- § 950. Indictment, or information, what to contain.
- § 951. Form of.
- § 952. It must be direct and certain.
- § 953. When defendant is indicted by fictitious name, etc.
- § 954. Must charge but one offense and in one form, except where it may be committed by different means.
- § 955. Statement as to time when offense was committed.
- § 956. Statement as to person injured or intended to be.
- § 957. Construction of words used.
- § 958. Words used in a statute need not be strictly pursued.
- § 959. Indictment or information, when sufficient.
- § 960. Not insufficient for defect of form not tending to prejudice defendant.
- § 961. Presumptions of law, etc., need not be stated.
- § 962. Judgments, etc., how pleaded.
- § 963. Private statutes how pleaded.
- § 964. Pleas and defenses.

mined must be sought for in its provisions—28 Cal. 206; 19 Id. 586; 21 Id. 402; 27 Id. 510; 34 Id. 290; 37 Id. 288; 39 Id. 53.

949. The first pleading on the part of the people is the indictment or information. [In effect April 9th, 1880.]

950. The indictment or information must contain—

1. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties.
2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended. [In effect April 9th, 1880.]

Caption: Entitling an indictment specifying the name of the court as of the County of San Francisco, or as the City and County of San Francisco, is sufficient. 4 Cal. 522, and see 10 Cal. 21

Subd 1. The indictment must be certain as to the defendant's name. 58 Ind. 47, but when it is given in full it may be repeated by the christian name only. 65 Me. 1, but each count must describe him by his christian name & surname. 48, 11 Denison, 38, 81 Ind. 165. Name of defendant must be taken advantage of by plea in abatement. 15 Me. 1, 20 Id. 329. 1 Mass. 4, 1 Met. 151, 12 Mass. 1, 62 R. v. G., 54 Ark. 15, 2 Va. Cas. 2, 1 Cox & A. App. 5. If a man renders it doubtful what his true name is, he cannot complain of the prosecutor. 2 Cramp. & J. 115. A corporation may be indicted by its corporate name. 17 S. & R. 38. 10 Mass. 8, 25 11, 4 N. H. 23, 4 Va. Cas. 6, 28 Vt. 53, 5 Car. & P. 48, 7 H. & B. 43, 4 Q. B. 1, see 45 N. Y. 13, 28 Ind. 31, 63 D. 45. A corporation may be indicted as a superior agent of a principal, as a partner. 10 Cal. 41, 8, 20 Ill. 14. Names are used if the purpose of the indictment is to identify the party, though varying from the true initials, 12 Mo. 46, 47, 10 Cal. 40, 50, so where the facts establish the name of a defendant. 44 Ark. 435, see 10 Cal. 40, 11 Ill. 61, 1 Cal. J. 30. Where the name of a defendant was published in a public list, as of a steamship, it may be so designated in the indictment. 10 Cal. 40, 50, 50 N. H. 31, 5 Met. 18, 44 Ark. 435, 14 Ind. 1, 3 Met. 144, 3 Ken. 112, 65 N. C. 3, 64 5, 10 Ark. 50, 10 Ind. 11. The name of a man may be taken from a list of names. 1 Cal. 41, 42, 1 Ark. 7, 14 Ark. 2, 2 Cow. 406, 20 Iowa, 8, 8 Geo. Long. 4, 41 145, 10 Mo. 71, 111 Bay. 37. As the law is not to recognize more than one club. 10 Ark. 54, 4 Ark. 40, 10 Iowa, 8, contra 1 Ark. 55, and see 10 Ark. 40, 10 Mo. 45.

Principal and accessory. Under a bill in which charges de-
fined as "the party who commits the offence," if the evidence shows
him to have been an accessory, § 414, 415, 416, 417. An
accessory is one who aids or abets the principal in the commission of a crime,
and is liable to the same punishment as the principal. If a prin-
cipal is not guilty of a crime, but is charged with it, he is
guilty of a crime, and is liable to the same punishment as the principal.
He is not liable to the same punishment as the principal if he is
charged with a crime, but is not guilty of it. If he is charged with a
crime, but is not guilty of it, he is not liable to the same punishment as the principal.

Subd. 2. Statement of offense. Facts necessary to constitute the crime must be stated—5 Cal. 207, 1d 39, 91d 21, 1d 75; 101d 79, see

47 *Id.* 102; in ordinary and concise language, and in such a way that a person of ordinary understanding can know what is intended—44 Cal. 29. All the matters must be set forth in which its illegality consists—62 Cal. 201. Every averment that is substantially necessary to charge defendant to defend himself must be stated—44 Cal. 50, and the omission will be fatal—4 *Id.* 75, 11, 356, 5 *Id.* 371, 8 Barn. & C. 11 (but unnecessary averments or aggravations are surplusage, and will be disregarded—13 *Id.* 173, 2 *Id.* 186, 12 *Id.* 6. If it does not substantially conform to the requisites of this section, it is demurrable—44 Cal. 310. It is not necessary to state the facts and conclusions of law—92 U. S. 514, 56 *Id.* 117, as charge given with "stealing" or "murdering"—52 Cal. 20, 3 *Id.* 265, 1 *Id.* 418, 13 N. C. 29, 31 *Id.* 10. Tex. 518, 1 *Id.* 7, 2 *Id.* 54, 69, or with being a defamer, or a doer, etc., or any such vague charge—15 *Id.* 181, see 1 *Id.* 12; Strange, 448, 2 *Id.* 351. Facts not vital to the accusation, as in matters of description, may be stated as unknown to the grand jury—46 Cal. 21, 3 *Id.* 201, prov. 1. It is desirable to state as fully as possible—54 Cal. 295, 12 *Id.* 384, *Id.* 394, 7 *Id.* 446, (N. C. 446), but it must be shown that it was at all unknown to them—26 *Id.* 283, 2 *Id.* 403, 13 *Id.* 216, 16 *Id.* 491. A bare negative qualification like "in verba verba" in an indictment, but must be relied on as matter of defense—44 Cal. 341, 3 *Id.* 501, 30 *Id.* 218, 2 *Id.* 600. When the occurrence of several facts, or the doing of an act under peculiar circumstances, is necessary to constitute the offense, the indictment must state them—46 Cal. 35. An allegation in an indictment descriptive of the identity of what is legally essential to the defense cannot be rejected as surplusage—20 Cal. 76.

951. It may be substantially in the following form: The People of the State of California against A. B., in the Superior Court of the county of —, the — day of —, A. D. eighteen —. A. B. is accused by the grand jury of the county of —, by this indictment, or by the district attorney by this information) of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows. The said A. B., on the — day of — A. D. eighteen —, at the county of —, (here set forth the act or omission charged as an offense, contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the State of California. [In effect April 30th, 1880]

Form of indictment.—For murder—34 Cal. 209, followed—47 *Id.* 102, cited—44 Cal. 41, 1, 390, for forgery—6 *Id.* 610, for larceny—4 *Id.* 117, for assault to commit murder—30 *Id.* 116.

Averment of crime.—The name given to the offense is not of itself the crime, and a mistake in regard to it is a mere error in name, and does not vitiate the indictment—44 Cal. 54, 3 *Id.* 371, 14 *Id.* 372. It is not necessary to aver that it is a felony, or a misdemeanor—20 *Id.* 12, and it is not necessary to state the degree of the crime—21 *Id.* 402, and the word "feloniously" need not be used—7 *Id.* 403, 3 *Id.* 371, 22 *Id.* 371, 12

Y. 379, 15 Pa. St. 85; 7 Serg. & R. 423; 3 Ohio, 1, Cald. 397; 2 East P. C. 1028, but see 2 Md. 376. So, "unlawfully" and other aggravating terms need not be used—1 Low 306; 4 Iowa, 502, 58 Ind. 514; 3 Neek 376, 1 Mo. 126, 2, Vt. 103, 23 N. H. 32. In an indictment for dealing faro, designating the offense as a felony is sufficient—4 Cal. 67. An error in a petition or nonapprehension of the offense is of no consequence, if the acts as defined by statute are sufficiently stated—39 Cal. 328; 14 Id. 568. The maxim of *idem sonans* does not apply to an indictment charging "larceny" for larceny—8 Pac. C. L. J. 322.

952. It must be direct and certain, as it regards—

1. The party charged.

2. The offense charged.

3. The particular circumstances of the offense charged,

when they are necessary to constitute a complete defense.

Must be direct and certain—51 Cal. 372, 20 Id. 80. If the language is capable of two interpretations, only one of which imports a charge, the indictment is not good—35 Cal. 671. The law does not require greater certainty than the nature of the case affords—34 Cal. 191; 36 Id. 247.

Subd. 1. As to party charged—14 Cal. 30; 34 Id. 209, 53 Cal. 616. See *ante*, § 950, *subd. 1*, note.

Subd. 2. As to the offense—14 Cal. 30; 20 Id. 80; 34 Id. 209; 53 Id. 616. Where the indictment charged the offense as "larceny," instead of "larceny," it was held that no offense was charged—8 Pac. C. L. J. 327. The substantial facts must appear with such certainty as will enable a man of ordinary intelligence to understand what is intended, and to enable the court to pronounce a proper judgment—4 Cal. 238, 8 Id. 376; 10 Id. 50, 34 Id. 155, 35 Id. 67, 40 Id. 55.

Subd. 3. As to the circumstances—14 Cal. 30, when necessary to constitute a complete defense—34 Id. 209, 47 Id. 102, 49 Id. 395. If it does not substantially conform to the requirements of this section it is demurrable—40 Cal. 395. As to larceny by bailee—19 Cal. 601. Assault with deadly weapon—12 Cal. 326. See notes under §§ 950, 959. Where an act contains several provisions, an indictment for violating it must state the peculiar provisions which the person intended to violate—52 Cal. 201. See *ante*, § 950, note, and *post*, § 959 and note.

953. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the indictment or information. [In effect April 9th, 1880.]

Constitutionality.—This section is not in violation of art. 1, § 13, of the Constitution of California—6 Cal. 213. See Const. Prov. *ante*, p. 17.

Indictment in wrong name.—If defendant is indicted by a wrong name, and so states when asked, and gives his true name, the true name must be substituted and all after-proceedings be had in that name—32 Cal. 69, see 5 Iowa, 434.

954. The indictment or information must charge but one offense, but the same offense may be set forth in dif-

ferent forms under different counts, and, when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count. [In effect April 9th, 1880.]

Indictment must charge but one offense.—42 Cal. 433; 77 Id. 461. If the indictment charges more than one offense, the objection is deemed waived unless it is taken by demurrer. 8 Pac. C. L. J. 172; 4 Cal. 44; 47 Id. 193; 30 Id. 116; 27 Id. 403; 1 Id. 361; 29 Id. 62. An indictment which charges a burglary, mixed with any other charges two offenses—29 Cal. 62; or charging A. with the larceny of certain goods, and B. with feloniously receiving them—34 Cal. 382, but where in one count it charges the goods taken to be the property of A. and in another to be the property of B. and in a third count to be the property of C., it does not charge different offenses—17 Cal. 361. Where two distinct acts are perpetrated by the same person, at the same time, they constitute but one offense—7 Cal. 461; 4 Dana, 518; 2 Har. & J. 43; 1 Ell. (N. C.) 1; 5 P. R. 40; 15 Pick. 23; 20 Id. 300; 22 Id. 1. So where a tax-collector receives money for licenses due the State, and other money for licenses due the county, and embezzles the whole, it is but one offense—23 Cal. 567; 80, an indictment which charges with forging and uttering does not charge two offenses—Id., see 27 Id. 46. An indictment which charges one with buying and receiving stolen property, charges but one offense—18 Id. 39, or charging one with having and circulating a false coin, is not a double offense—11 Id. 40. But charging an accusation of assault with intent to murder and stating facts showing that he administered poison with intent to kill—34 Cal. 54, or charging an assault and battery as part of or mode of executing, a forcible arrest or a judgment—25 Id. 664, or charging rape, and assault to commit it, is not charging two offenses—34 Cal. 553. If the indictment contains more than one count, it should clearly appear that they are descriptive of the same transaction—34 Cal. 24.

Alternative allegations.—Allegations in the alternative are permitted when they qualify an unessential description of a particular offense, and do not touch the offense itself—34 Ala. 518; 13 W. Va. 509, as describing a horse stolen as being "either a brown or a bay color"—22 Vt. 61, or that certain trees cut down were the property of the defendants or either of them—1 Pac. St. 433; 16 Ind. 9, or "as a subscriber or contributor"—2 Met. 19; 5 Id. 46, or "in a certain place or publication"—3 Johns. Cas. 328, or cutting or causing to be cut—4 Mich. 128; 44 Mo. 44, or alleging an offence to be on the "high way or road" have been held to be good—3 Johns. 47; 22 Ala. 60; 35 Ala. 44; 4 Mo. 41. The use of "or" in an allegation is fatal when it renders a statement uncertain—8 Mass. 5; 2 Gray, 50; 6 Mo. 44; 6 Parker C. R. 38; 7 Grant 592. When the words in a statement are synonymous it may not be error to charge them in the alternative—30 Id. 500; 4 Mo. 44; 64 Id. 38; 43 Tex. 51; see 2 Johns. 324; 81, or "or," as introduced in a statement of averments to exclude exceptions in a statute—20 N. H. 50; 3 W. Va. 50. When the statute enumerates several acts, and the indictment should charge them in the conjunctive—23 Cal. 30; Id. 513; 25 Id. 508.

955 The precise time at which the offense was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense. [In effect April 9th, 1880.]

law, which are construed according to their legal meaning. [In effect April 9th, 1880.]

Words construed. Words and phrases are to be construed according to their common acceptation, except such as are specifically defined by law. 3 Cal. 356. See ante, § 7.

958. Words used in a statute to define a public offense need not be strictly pursued in the indictment or information but other words conveying the same meaning may be used. [In effect April 9th, 1880.]

Statutory offenses.—The indictment is sufficient if it charge the offense in the language of the statute and fully comply with § 229 of the Code.—33 Cal. 62, 211, 403, 254, 532, 1913 601, 1011 301, 311, 317, Cr. R. 368, 6 Cal. 488, 913 544, 323 191, 33 Cal. 114, 1 200 141, 20 20 Id. 329, 12 B. & C. 41, 5 B. & C. 41, 3 Id. 48, 4 Conn. 41, 28 1 400, 2 Cal. 125, 2 Cal. 6, 29 Gratt. 844, 1 Greene 48, 2 Id. 107, 3 Halst. 294, 3 Gratt. 590, 82 La. 41, 84 Id. 26, 46 Iowa, 667, 3 Id. 41, 1 Mo. 44, 119 Mass. 347, 2 Minn. 21, 37 Mo. 41, 1 McMill. 41, 37 N. H. 14, 1 Vt. 35, 28 Vt. 46, 3 Vt. 46, 5 Vt. 46, 5 Vt. 46, 5 Vt. 46, 5 Vt. 46, 2 Swanwick, 2 Strob. 41. It is not necessary to follow strictly the language of a statute by which the offense is defined, words conveying the same meaning may be used. 35 Cal. 114, 34 Id. 114, 51 Id. 61. If it alleges all the acts or facts which enter into the description of the offense it is sufficient. 31 Cal. 201. If a statute enumerates a series of acts as constituting the offense, and such acts may be charged in a single count. 28 Cal. 509; if it enumerates them disjunctively and the indictment charge more than one of them, it must charge them conjunctively unless the word used disjunctively are synonymous. 31 Cal. 363. It should state the particular provision of the act which has been violated. 32 Cal. 261.

959. The indictment or information is sufficient, if it can be understood therefrom—

1 That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. If an indictment, that it was found by a grand jury of the county in which the court was held; or if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held.

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury or district attorney, as the case may be, unknown.

4 That the offense was committed at some place in the jurisdiction of the court, except where though done without the local jurisdiction of is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case. [In effect April 9th, 1880.]

Subd 1. Entitling indictment. An indictment may be entitled either "county" or "city and county." 14 Cal. 52, 17 Cal. 363, 6 Cal. 202. The caption is no part of the indictment. 2 Har. (D.) 532, 1 Hawks, 324, 211 Cal. 31, 1 Ala. 612, 30 N. H. 31, 1 N. Y. 111, 13 Vt. 64, 30 Ill. 30, 1 W. 113, 2 Z. 113. See 4 Post 429, 1 A. 1 & E. 347, 4 A. 11. App. 100, 50. Its purpose is to state the name of the court, the time and place where the indictment was found. 20 Ala. 33, 31 Me. 78, 8 M. 130, 30, 41 & 135, 1 Yerg. 296. It must be set forth with reasonable certainty. 3 M. 130, 56, 20 Ala. 33, 30 Me. 78, 4 Tex. 123, 1 Yerg. 296. See ante § 930, note.

Subd 2. Finding of indictment.—The indictment must allege the offense committed within the county in which it was found. 48 Cal. 258, 613 Cal. 25, 30 Mich. 371, 8 Leigh, 711, Leigh & C. 124. See ante, § 930.

Subd 3. Wrong names.—If a defendant is indicted by a wrong name and so states when asked, and gives a true name, the true name must be substituted. 32 Cal. 64. See ante, § 935, and note.

Subd 4. Jurisdiction.—That defendant at a time named was in the county where the indictment was found. Such a finding shows that the offense was committed within the jurisdiction of the court. 48 Cal. 458, 4 Har. 327, 100 Cal. 366, 1 Tyler, 33, 10 Mich. 371, 124. An indictment for an offense committed in a county is not set forth and is facts, giving the extent of jurisdiction in the county of indictment. 7 Cal. 258. An indictment against an accessory must be found in the county where the principal act was committed. 10 Cal. 41, 41 Cal. 539. When property is stolen from one county and carried into another, the party may be indicted in either county. 20 Cal. 411, 21 Cal. 50. Where a county is divided, the offense may be found in the new county, if committed there, after the division. 4 Har. 357, 4 Tex. 400, see follow 467, 30 Me. 201, 4 Fred. 29, see 13 Ark. 98. Until the organization of the new county the indictment may be found in the old county. 32 Cal. 140. See ante, § 930.

Subd 5. When the day on which the indictment was found is given, the term of the court is sufficient if stated. 14 Cal. 671. "Sabbath" for "Sunday" is no variance. 64 N. C. 589.

Subd 6. See ante, § 930, subd. 2.

Subd 7. See a

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376; 6 Ind. 333; 20 Iowa, 582; 8 Ired. 195; 12 Mo. 574; 55 Miss. 403, 22 N. Y. 317; 72 Id. 372, 53 N. C. 301; 80 Id. 384; 63 Id. 234, 7 Pa. St. 439, 6 Tex. Ct. App. 24, 9 W. Va. 64, 8 S. C. 237; see 15 Pa. St. 95. So as to mere misspelling—6 Ind. 333, 4 Wis. 400; it is no ground for arresting judgment—1 Dev. 253; 3 McCord, 1 S. La. An. 183, 14 Rich. 356. The omission of formal words is not fatal—21 Mo. 481, 14 Vt. 353. So, erasures and interlineations do not vitiate—15 Gray, 194, 16 Id. 16, 12 Ind. 679, 44 N. H. 383, 14 Ohio, 461, 7 Car. & P. 319.

Sufficiency, how tested.—The sufficiency of an indictment is to be determined by the rules prescribed by this Code, and if an indictment, upon a fair reading, would stand this test, it is sufficient, though not good at common law. 39 Car. 216, 37 Pa. 286, 27 Id. 511, 17 Id. 166; 9 Ill. 53, 8 Id. 355. Mere formal defects, by which substantial rights of defendant are prejudiced, would not justify an arrest of judgment—37 Cal. 281, as in case of matters of description—43 Id. 446, 23 Id. 211. Numbers and dates given in figures and abbreviations, instead of being written out—3 Vt. 481; 2 Ashm. 10, or, the omission of a formal word—14 Vt. 353; 21 Mo. 481, 3 Dev. 452, 11 Mo. 674; so, of erasures and interlineations, where the indictment is otherwise legible—15 Gray, 94, 14 Id. 376, 11 Id. 4, 12 Ind. 679, 14 Ohio, 461, 7 Car. & P. 319.

961. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment or information. [In effect April 9th, 1880.]

See 92 U. S. 544; 56 Ind. 107; 110 Mass. 181; 3 Cranch C. C. 618.

962. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

963. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Private statutes.—An indictment on a private statute must set out the statute in full—7 Conn. 1, 1 D. & B. 115, 18 Id. 336. This section changes the common-law rule—see 2 Hale P. C. 112, 2 Hawks, ch. 25, s. 103; Bac. Abridg. "Indictment," p. 2.

964. An indictment or information for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was

so published must be established on the trial.

April 9th, 1880.

Libel. The document should be set out in words
Hump 63, 1 Cush 46, 3 Hast 333, 2 Hawks, 248, 65 In
84, 10 0, 1, 66, 2 South 34, 7 Serg & R 46, 10 10. 17
1 Levh 7, 1d 145. If it settles not accurately 1 Cush
63, 2 McOrd, 248, 1 Serg & R 1, 100, 1d 46, but
it need not be set out as Mc, 50. Take that at the end of
not be set forth 248, 28. If the sing be set out at
substance is not sufficient—6 Rich 3, 14 1d 46, 10 Serg
Hun, 1 63. Wic. It was set out according to the tenor
following that is say "It is ~~in~~ the 1, 10 1d 46, 10 Serg
but describing the 1d as a letter, criminal, or in phre
trona. The 1d only a note of pronunciation. 1. Mc 53
unless a fatal tier does not alter the meaning of a word,
is in the 1d—1d 46, 1 2. Where party selected
preceded by the words "in these words," or "as follows"
words and figures following "or" to the tenor following
will be fatal—66 1d 14, 34 Mc 383, 1 Cush 46, 2 Ohio St
1 248.

The indictment must set forth matter which is pri-
ous, or must charge that matters set out, although not
face, was designed to be so—b 1red 418. The charge
more specif than the l... is p... 3 H... ch...
that d... d... sent the l... is a sufficient publication.
The office of an indictment is to point out and refer to
viciously expressed to ex... in the mean... was to secure
cate perso... with reference to them is an... 60
17. An indictment which alleges that defendant pub-
"tending to... the honesty... victim... and
the said A. B., and thereby exposed him to public hatred
cont... of... which said fals... scandalous, and malicious
are defamatory and libelous matters of and concerning
of the said A. B.," sufficiently charges that the libel was
A. B.—4 Ga. 14.

965. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment or information, and proved on the trial, the misdescription of the instrument is immaterial. [In effect April 14th 1880.]

Lost instrument — Where the document is lost or destroyed, and a certificate of its loss is filed, it is sufficient to aver specifically that the instrument was lost or destroyed, and that the party is ignorant of its whereabouts. 100 Ala. 166, 170; 2 Miss. 448, 34 M. 234, 4 Ala. 166, 4 Ala. 167, 18 W. 151, 2 Term. Rep. 60, 4 Cal. & P. 54, 11 Tex. 309. A bond was written and forfeited, and given, 587, see 1 Head. 101, which was lost, and a writ issued for a variance. 16 1 Year 147. Where a bill has been introduced to be set setting forth will be excessive. 1 Mass. 206, 13 Id. 46: 51, 1 Mann. (Mich. 90, but it is reasonable of the omission. 1 Cush. 66. A non-description will be excused even by prosecutor's negligence—12 Minn. 108. The product

instrument will be fatal, if there is a variance between the indictment and the proofs—33 Ind. 139. See *ante*, § 859, note.

966. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned, but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. [In effect April 9th, 1860.]

Perjury—An indictment charging the offense in the words of the statute is sufficient—6 Cal 467. See *ante*, § 958. An indictment charging that a "certain defendant wilfully, corruptly, and falsely swear, without adding "falsely and knowingly" is sufficient—6 Cal 467. That accusatory describing the proceeding as "wilfully, corruptly, and falsely swear, etc., leaving out "falsely and knowingly," is sufficient—7 Cal 461, 62, 487. It should appear that the false evidence given was material to determination of the issue—1 Barb 35, 4 Linn 487, and it must show that the offense was committed in a judicial proceeding—36 Vt 59, 2 Id 122, 25 N. H. 42, or in a course of justice—30 Me 317, 6 Vt 93. It must state in what trial the oath was administered—10 Marsh 176, 4 Barb 23, and that the court or officer had authority to administer the oath—30 Me 317. It is sufficient to aver that an issue was duly joined—1 Iowa, 160, 1 Mass 254, 1 Ohio 401, 5 Wend 9. The indictment need not specify the particular issue in which the prisoner was sworn—3 Strep 147, 9 N. H. 98, 36 N. Y. 457, 10 R. I. 135, 30 Barb 53. But if the form of oath be alleged, it must be stated correctly—2 Hilles 601, 1 Housp 4. An averment of the substance of the oath is sufficient—5 Wend 41, 6 N. Y. 8 pr 206. It need not set out the whole oath, only that part which is false—4 Mo 119, 8 Wend 636. It must allege that defendant wilfully and corruptly swore that a certain statement is true, knowing it to be false, or, if it, knowing it to be true, swore that it was false—11 Va 562, 28 Tex 626, 4 McLean 113, 4 Tex 208, see 20 Iowa 581. Falsely, wilfully, and corruptly, is sufficient, without the word "knowing"—37 Vt 17, or "falsely and knowingly"—6 Cal 487, 7 Id 403. It must charge the falsity of the statement and not leave it to be shown by the jury, or by the defendant—28 Tex 626. A general allegation that defendant swore falsely is not sufficient—1 Barb 51. See 30 Me 317. It is not set out the substance or an effect of the testimony which is alleged to be false—Biss 47. See 10 Barb 51. It must show that the false testimony was material—12 Mass 74, 32 Cal 242, 34 Me 317, see 12 Me 25, 48 Mo 79, 2 R. I. 134, 1 Marsh 176, 14 Gray 5, 12 Id 4, 4 Id 3, 1 Mass & R 135. Where the materiality of the matter appears from the statement, it is unnecessary to give of materiality is unnecessary—1 Black 49, 7 Met 79, 8 Wend 106, 2 Zab 49, 1 Mich 302, 10 Ind 42, 20 Id 41, 41 Mo 278. See *ante*, § 116.

967. In an indictment or information for the larceny or embezzlement of money, bank-notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank-notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof [In effect April 9th, 1880.]

Larceny It is not necessary to state facts showing the commission of the offense in another county—40 Cal. 646. The venue may be laid in any county into which the stolen property is conveyed if there is a repugnancy between the caption and the statement in the body of the indictment as to the venue, it is bad for repugnancy and uncertainty—18 Tex. 31. It must allege that the larceny was committed in the county where the indictment was found—45 Mass. 61 Nev. 208, 3 Stew. 123, 49 Ill. 397.

Description of property—The goods must be described with certainty to a common intent—8 Barb. 637. It must describe the articles by the names they usually bear, and specify the number and value of each species or particular kind—11 Humph. 29, 8 Fred. 228.

An indictment for larceny of a piece of paper may simply state its value, without further description—60 Mass. 206, see 103 id. 42, as to proper averments—4 Story & R. 134, 41 Conn. 590. So, for stealing a parcel of oats "is sufficient." Dev. 7. Charging the stealing of "one hundred and thirty dollars" without a specific description of the money is bad—20 Ark. 68, 8 C. 2 Am. Cr. R. 240. The species of money stolen must be alleged—12 Cox C. C. 25, S. C. 1 Grant C. R.

Money Sundry gold coins current as money in this commonwealth of the aggregate value of twenty-five dollars, but a more particular description of which the jurors cannot give, as they have no means of knowledge—is sufficient—11 C. 142, or sundry bank bills of the value of twenty dollars respectively to said jurors unknown of the amount and value of that eight dollars—10 Gray 40. An information which describes the property as one hundred and thirty five dollars is good, though a verdict of \$1, and the fact that the value is false is not fatal—6 Mich. 288, S. C. 16 Grant C. R. 8. A coin which bears the name of so many pieces of current gold or silver coin, specifying the species and value known to the grand jury, will be good, though it may be stated—16 C. 145, 4 id. 113. That the grand jury have no knowledge or means of knowing the particular description of the coin or bank bills is no ground of challenge—11 C. 142, 12 Allen 4. It must state that they were of the current coin of the United States—37 Tex. 359.

An indictment not showing the species of cattle taken is a defect—54 N. 355. Describing a cow as in the alternative as to kind is not a fatal error—15 Cal. 408. Where the indictment describes an animal as a bay, proof that he was a bay or sorrel is sufficient to support the verdict—3 Mich. 46, S. C. 16 Grant C. R. 383. In an indictment for stealing goods and chattels it need not aver that they were taken from the owner, but it must aver that they were taken from the owner's possession—12 Allen 4. It must state that they had been severed from the owner before the alleged taking—37 Tex. 359. The allegation in an indictment for larceny, that defendant

erty stolen belongs to a body of persons, it ought not to be property of the body unless incorporated, but should be, belonging to the individuals—63 Ill. 461, 2 Green Cr. R. 20.

Value—Where the nature of the punishment depends on the value of the thing stolen, the value of value is material—42 Ala. 531, 1 Mass. 45, 31 N. H. 40, 40 Ga. 271, 54 Wash. 305; Cr. R. 276. The value of a thing stolen must be stated, and must be separately and specifically stated—41 N. H. 624; *contra*, 5 Blackf. 24, 8 Ill. 48, 101 Mass. 27, 41 Ala. 296, 3 1 Port. 18, 8 Gray, 4-2, 10 Ill. 40, 40 Ala. 23.

An indictment charging with the larceny of two hundred sheep, if the value of the sheep is stated, is sufficient, the value of each sheep is not stated—34 Cal. 80. A charge of value in the indictment is not a legal error—United Stat. 3, is sufficient—94 Ill. 4. The indictment is sufficient if it is as certain as the language in the statute. Under the statute of 1868, it is not necessary to state the larceny, more, etc.—32 Cal. 43. An indictment for larceny with intent to steal need not aver the value of, nor give a general description of the property the defendant intended to steal—34 Cal. 451.

Guilt knowledge and intent—It must allege that it was taken with intent to deprive the owner of it—36 Tex. 231, and that it was taken without the consent of the owner—293, but this is unnecessary where he had possession only of the property—35 Ill. 74, 800 Ill. 135. An averment that he broke into a house with intent to steal or commit a felony—grand larceny—43 Cal. 684, 8. C. 2 Green Cr. R. 623, but 717.

Joinder—Where several were joined in a charge of attending a lottery, though only one had the act—103 Mass. 117. It is immaterial whether they were previously acquainted, confederated for a felonious purpose—43 Ill. 37. The receiver cannot be jointly indicted—34 Cal. 181, *contra*, 2 Allen, 451.

Distinct offenses—Distinct larcenies may be presented in counts—14 Mass. 557. So, as to larceny, and receiving—Hill, 3 Ill. 67, 4 Ind. 248, 4 La. An. 431, 11 415, 10 Cush. 57, breaking and entering an habitation—3 Pak. 36, 22 Ill. 1, see 18 Mass. 58. As to receiving in California, see *ante*, § 964, embezzlement, and stealing—3 Met. 138.

Charging in different ways—An indictment charging "stealing, and leading or carrying away" is not bad, as if it were in the conjunctive—15 Cal. 408, *see ante*.

Second offense—The indictment must state facts to show, prior to last offense, see convicted of a previous offense, see 3 Parker Cr. R. 306, 1 Hill 201, 1 Parker Cr. R. 643, 754, 6 Ill. 427.

Material averments—The word "steal" is not necessary—2 Mass. 26, 2 Ind. 11, and the word "steal" for steal is an arrest of judgment—4 Blackf. 457. Where the indictment is "in larceny" it was held that the word "larceny" could be used, and the indictment charged to effect—30 Ill. 106. "Larceny" is a charge of stealing, and "steal" is a charge of stealing—30 Ill. 106. The words "steal" and "stealing" are necessary in an indictment for stealing a chattel—40 Cal. 451.

Charging attempt—A charge of an attempt must state the fact that the defendant took the impression of a key, and was

in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [In effect April 9th, 1880.]

Obscene publications. The indictment need not so fully describe them as to spread them out on the records—1 Mann, (Mich. 40, 7 Mass. 136, but if set out, it must be in the very words of which it is composed—1 Cust. 66, but when too obscene, a description may be substituted, and a reason for the omission be stated—12. It is not necessary to allege that the exhibition of an obscene picture was in a public place, if exhibited to sundry persons for money—2 Serg. & E. 31.

969 Section nine hundred and sixty-nine of said Code is hereby repealed. [In effect April 9th, 1880.]

970. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. [In effect April 9th, 1880.]

Severalty. Convictions of codefendants are several—22 Miss. 44. The charge against them is several as well as joint—2 Fred. 40, 49, 45, and in joint verdict is a distinct verdict against each—2 Pa. 42. So one may be found guilty and the others acquitted—12 Ark. 523. Where two are charged with a offense, it is not necessary that the proof goes only to one—21 Ark. 523, 100 Mass. 586, 107, 128. Acts adultery—7 Jones & Co. 14, 15, 57, and see 14 Ohio 385. Where several persons are jointly indicted and convicted, they should be sentenced severally—16 Ark. 523, 14 R. Mon. 366, 3 Wis. 753, and be severally fined—16 Mo. 449, 21 Id. 564, 6 Id. 302.

971. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting an offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment or information against such an accessory than are required in an indictment or information against a principal. [In effect April 9th, 1880.]

Accessories before the fact. An accessory before the fact may be indicted, tried, and punished as principal—45 Cal. 23, 40 Id. 141. Nevertheless, the indictment must specify that he aided and abetted the

4d 410; 12 Kan. 550; 37 Pa. St. 169; 64 Id. 187; 59 Mich. 194. An accessory not amenable to the law cannot be arraigned, unless his acts render him liable as principal—1 Wood. & M. 221. On separate trials, the conviction of the principal is only *prima facie* evidence of guilt on trial of the accessory, and may be collaterally disputed—3 Cliff. 221; 6 Fred. 236; 29 Me. 84; 33 N. H. 216; 10 Pick. 477; 1 Mass. 54; 13 Wend. 592; 10 Sumner & M. 192; 1 Moody C. C. 347. Aiders and abettors may be convicted, although the principal has been acquitted—28 Ga. 216; 29 Mo. 32; 10 Cal. 68; 1 Leach, 360; 2 Shaw, 370; Russ. & R. C. C. 314; Saik. 334.

972. An accessory to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted. [In effect April 9th, 1880.]

Both the principal and accessory may be indicted together or separately, without reference to the previous conviction or acquittal of the other—10 Cal. 68; 20 Id. 439; and so with reference to aiders and abettors—Id. Accessories before the fact may be tried separately—8 Cal. 129; 56 Ga. 92; 4 Ill. 368; 49 Id. 410; 14 Ind. 52; 48 Iowa, 265; 12 Kan. 550; 29 Me. 84; 128 Mass. 242; 18 Ohio St. 496; 19 Ohio, 131; 25 Pa. St. 221; 12 Wis. 532; Law R. 1 C. C. 77; Bell's C. C. 343. They may be indicted, although the prime actor be dead or escaped—2 Brev. 38; Meigs. 106; and see 24 Mo. 475.

TITLE VI.

**Of Pleadings and Proceedings after Indictment
and before the Commencement of the Trial.**

CHAP. I. OF THE ARRAIGNMENT OF THE DEFENDANT,
§§ 976-90.

II. SETTING ASIDE THE INDICTMENT, §§ 995-9.

III. DEMURRER, §§ 1002-12.

IV. PLEA, §§ 1016-25.

**V. TRANSMISSION OF CERTAIN INDICTMENTS FROM
THE COUNTY COURT TO THE DISTRICT
COURT OR MUNICIPAL CRIMINAL COURT OF
SAN FRANCISCO, §§ 1028-30.**

**VI. REMOVAL OF THE ACTION BEFORE TRIAL, §§
1033-8.**

VII. THE MODE OF TRIAL, §§ 1041-3.

**VIII. FORMATION OF THE TRIAL JURY AND THE CAL-
ENDAR OF ISSUES FOR TRIAL, §§ 1046-9.**

IX. POSTPONEMENT OF THE TRIAL, § 1052.

CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

- § 976. Defendant must be arraigned in the court where the indictment is filed or transferred.
- § 977. Defendant, when to be present at arraignment.
- § 978. If in custody, to be brought before court.
- § 979. If discharged on bail, bench-warrant to issue.
- § 980. Bench-warrant, by whom and how issued.
- § 981. Form of bench-warrant.
- § 982. Directions in the bench-warrant.
- § 983. Bench-warrant, how served.
- § 984. Proceeding on giving bail in another county.
- § 985. Ordering defendant into custody or increasing bail when indictment is for felony.
- § 986. Defendant, if present when order made, to be committed; if not, bench-warrant to issue.
- § 987. Right to counsel on arraignment.
- § 988. Arraignment, how made.
- § 989. Proceedings on arraignment, when defendant is not indicted

§ 990. If it is true and



Personal presence.—The defendant is arraigned in person—53 Cal. 298, unless in case of misdemeanor—42 Cal. 168. In case of breaking jail and escaping, he waives his right to have counsel appear for him in a case of misdemeanor—53 Cal. 298; 42 Cal. 168, 97 Mass. 543, cited 23 Cal. 160. See Const. Cal. art. I, § 13.

978. When his personal appearance is necessary, if he is in custody, the court may direct, and the officer in whose custody he is must bring him before it to be arraigned.

Rights of defendants.—The defendant has a right to appear and remain without chains and shackles—42 Cal. 168.

979. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

See 53 Cal. 298.

980. The clerk, on the application of the district attorney, may, at any time after the order, whether the court is sitting or not, issue a bench-warrant to one or more counties.

See 53 Cal. 298.

981. The bench-warrant upon the indictment or information must, if the offense is a felony, be substantially in the following form: County of ——. The people of the State of California to any sheriff, constable, marshal, or policeman in this State. An indictment having been found (or information filed) on the — day of —, A. D. eighteen —, in the Superior Court of the county of —, charging C. D. with the crime of — (designating it generally), you are, therefore, commanded forthwith to arrest the above named C. D., and bring him before that court, (or if the indictment and information has been sent to another court, then before that court, naming it (to answer said indictment (or information), or if the court be not in session, that you deliver him into the custody of the sheriff of the county of —.

Given under my hand, with the seal of said court
affixed, this — day of —, A. D. —.

By order of said Court.

[SEAL.]

E. F., Clerk.

[In effect April 9th, 1890.]

Cited—53 Cal. 298; 54 Cal. 102. A general description of the offense is
sufficient—9 Ga. 76.

982. The defendant, when arrested under a warrant
for an offense not bailable, must be held in custody by
the sheriff of the county in which the indictment is found
or information filed, unless admitted to bail after an
examination upon a writ of habeas corpus; but if the
offense is bailable, there must be added to the body of
the bench-warrant a direction to the following effect: "Or,
if he require it, that you take him before any magistrate
in that county, or in the county in which you arrest him,
that he may give bail to answer to the indictment, or
information"; and the court, upon directing it to issue,
must fix the amount of bail, and an indorsement must be
made thereon and signed by the clerk, to the following
effect: "The defendant is to be admitted to bail in the
sum of — dollars." [In effect April 9th, 1890.]

given bail for his appearance to answer the charge, the court to which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order. [In effect April 9th, 1880.]

986. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench-warrant must be issued and proceeded upon in the manner provided in this chapter.

987. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Cited—55 Cal. 298. See 15 Cal. 331; Const. of Cal. art. 1, § 12.

988. The arraignment must be made by the court, or by the clerk or district attorney under its direction, and consists in reading the indictment or information to the defendant and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment or information. [In effect April 9th, 1880.]

Manner of arraignment. Where the indictment was not read to the defendant, a copy of it with the indorsements was neither delivered nor tendered to him, nor was he either then or thereafter asked whether he would plead guilty or not guilty, there was no arraignment—28 Cal. 330. If the defendant when arraigned asks for and obtains time to plead, he waives any defect in the statutory details of the arraignment such as the failure to give him a copy of the indictment—49 Cal. 228. See 28 Cal. 331. The defendant being brought into court, the first step is to call upon him by name to answer the matter charged against him. See 1 Barr. 645, 2 Hale P. C. 119, see *ante*, §§ 858-859-976, and notes, and *post*, § 990, and notes.

989. When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment or information. If he gives no other name, the court may

proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein. [In effect April 9th, 1880.]

Name unknown.—If, when arraigned, the defendant fails to give his true name on request, he cannot afterward complain if he is tried by the name specified in the indictment—8 Nev. 251. If he gives his true name, it must be substituted, and the subsequent proceedings be had in the true name—43 Cal. 64; which must be entered on the minutes—6 Cal. 212.

See ante, § 988. and note.

990. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment or information. [In effect April 9th, 1880.]

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

- 994. Indictment, when set aside on motion.
- 996. Defendant waives objections, unless he makes the motion.
- 997. Motion, when heard. If denied or granted, what proceedings are to be had.
- 998. Effect of order for submission.
- 999. Order no bar to another prosecution.

995. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases: If it be an indictment—

- 1. Where it is not found, indorsed, and presented as prescribed in this Code.
- 2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon.
- 3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in section nine hundred and twenty-five.
- 4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be on information—

- 1. That before the filing thereof the defendant had not been legally committed by a magistrate.
- 2. That it was not subscribed by the district attorney of the county. [In effect April 26th, 1880.]

Motion.—Making out and filing a written application is not sufficient to constitute a motion. The attention of the court must be called to it and the court be moved to grant it—41 Cal. 630. Where the evidence

is conflicting, the court may refuse to set aside the indictment—41 Cal. 388. An order setting aside an indictment is not an interlocutory order, but a final order and appealable—31 Cal. 388.

Subd. 1.—See 34 Cal. 38, 21 id. 390, 21 id. 393. This subdivision refers to provisions of the Code prescribing the mode of finding, indicting and presenting the indictment—41 Cal. 38; 40 id. 140; see 4 id. 12, 34 id. 388. See *note*, §§ 941-42.

Subd. 2. See 3 Cal. 36, 21 id. 393, 21 id. 393; 34 id. 388. See *note*, § 941.

Subd. 3. See 34 Cal. 390, *note*, §§ 942, 943, 944, 945.

Subd. 4. Challenge to grand jury.—If the defendant was held to answer before the grand jury met, and was informed that he could interpose a challenge to the panel or to an individual grand juror and he declines to do so, he waives his right to do so after he is indicted—43 Cal. 426, see 34 Cal. 39, 21 id. 431, see 29 id. 239, but if he was not held to answer at the time he may interpose a challenge to the panel or an individual juror on his arraignment—14 Cal. 511. A person accused before indictment may challenge any one returned on the grand jury. 1 Black 317, 2 id. 473. 2 Brewster (Pa.) 737, 17 Ohio 31, 32, but it is too late after indictment is found and accepted—21 Cal. 511. Fort 108. 11 Sanchez & M. 27, 3 Eng 78, 1d 21, 3 Wend 314. So, an objection to the formation of the grand jury cannot be presented as motion to set aside the indictment—34 Cal. 39, 40 id. 140, as such objection on arraignment on such a ground is in effect, a challenge to the panel—40 Cal. 140, but if the indictment was found by a special grand jury, it can be set aside on the first and third grounds of this section—31 Cal. 39, see 43 id. 29. So, an indictment found by a jury summoned as a petit jury and impaneled as a grand jury, is illegal—45 Cal. 3. See *note*, § 944.

996. If the motion to set aside the indictment or information is not made, the defendant is precluded from

ney; *provided*, that after such order of resubmission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases, if, before indictment or information filed, he has not been examined and committed by a magistrate. [In effect April 9th, 1880.]

998. If the court directs the case to be resubmitted, or an information to be filed, the defendant, if already in custody, must so remain, unless he is admitted to bail or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information; and, unless a new indictment is found, or information filed before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section. [In effect April 9th, 1880.]

999. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense. [In effect April 9th, 1880.]

CHAPTER III.

DEMURRER.

- § 1002. Pleading on part of defendant.
- § 1003. Demurrer or plea, when put in.
- § 1004. Grounds of demurrer.
- § 1005. Demurrer, how put in, and its form.
- § 1006. When heard.
- § 1007. Judgment on demurrer.
- § 1008. If allowed, bar to another prosecution; when.
- § 1009. If resubmission not ordered, defendant discharged, etc.
- § 1010. Proceedings, if submission ordered.
- § 1011. Proceedings, if demurrer is disallowed.
- § 1012. Objections, forming ground of demurrer, when taken.

1002. The only pleading on the part of the defendant is either a demurrer or a plea.

1003. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for

ment of sections nine hundred and fifty, nine hundred and fifty-one, and nine hundred and fifty-two.

3. That more than one offense is charged.

4. That the facts stated do not constitute a public offense.

5. That it contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution. [In effect April 9th, 1880.]

Grounds of demurrer.—Objections to the indictment must be taken prior to plea, or they cannot be considered on arrest of judgment, except under the fourth subdivision of this section, for if no offense is charged, no conviction can be had—7 Cal. 129, 14 289, 10 id. 27; 27 id. 394; 28 id. 265; 39 id. 370. An indictment defective in substance and form may be demurred to—10 Gratt. 708; but it will not lie for defect in indorsing and filing the indictment—28 Ark. 410.

Subd. 1. If it appears from the caption that the court had no jurisdiction, the indictment will be adjudged invalid—1 Term Rep. 318; 1 Learch, 4.5. Where the record does not show objections to the jurisdiction, the presumption is in favor of the regularity of the proceedings—40 Cal. 655. See *ante*, §§ 7.4-7.6.

Subd. 2. That the indictment did not contain the particular circumstances of the offense is a ground for demurrer—49 Cal. 290. See *ante*, §§ 950, 959. Where there are two counts and one of them is good, a general demurrer will be overruled—6 Pac. C. L. J. 60. The omission to state any description of the property stolen is ground for demurrer—40 Cal. 277, 36 id. 247, so, it will not lie for a failure to give an application to the offense—39 Cal. 331. It will not lie to a part of a count—42 Md. 563, Law R. 3 H. L. 306. It will not avail when the offense is set forth with substantial accuracy—38 Md. 286, 39 id. 352. See *ante*, §§ 950, 959.

Subd. 3. Charging two offenses is a ground for demurrer—43 Cal. 82; 47 id. 08; 27 id. 394; 35 id. 115. See *ante*, § 954, and note.

Subd. 4. See *ante*, § 950.

1005. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment or information, or it must be disregarded. [In effect April 9th, 1880.]

1006. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

1007. Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

3 N. Y. 9; 1 Va. Cas. 202; 2 Ill. 287; 15 Ind. 447; 10 N. C. 426; 8 Yerg. 380; 68 N. C. 647; 71 Ill. 303; 7 Ga. 423; 40 Tex. 1; 5 Har. & J. 317; 1 Ark. 429; 19 N. Y. 523.

1008. If the demurrer is allowed, the judgment final upon the indictment or information demurred to is a bar to another prosecution for the same offense, the court, being of the opinion that the objection on the demurrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to another grand jury, or directs a new information to be filed, *provided*, that after such order of resubmission the defendant may be examined before a magistrate, and charged or committed by him, as in other cases. (Effect April 9th, 1880.)

A judgment against the prosecution on a special demurrer is final when the defects demurred to are merely formal. A new indictment must be sent in with the defects cured. — 3 Cranch C. C. 441, 547. And defendant will be held over to await a second indictment. — 21.

1009. If the court does not permit the indictment to be amended, nor direct that an information be filed, and that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if deposited money instead of bail, the money must be returned.

Demurrer overruled. Where there is on the face of the pleading no admission of criminality on the part of defendant, he will be permitted to plead. 3 Mass. 456, 3 Pen. & W. 262, 8 Watts 77, 9 Mo. 687; see 3 Ill. 33, 1 Mo. 323, 11. 326; 35 Miss. 366, 3 Met. 453. In some jurisdictions no will not be permitted as a matter of right, but must lay sufficient grounds before permission will be granted. 3 Cal. 265; 29 Ill. 562, 37 Mo. 324, 64 Id. 569, 17 Vt. 151; 19 Conn. 476, 2 Verg. 472; 8 Hunph. 37, 6 Leigh, 638, see 3 Denio, 91, 2 N. Y. L. Where the indictment is adjudged good on demurrer the prisoner may except, and if the exception is sustained judgment may be rendered in his favor; if overruled judgment may be rendered for the state, unless the prisoner has reserved a right to plead *alieu*.—54 Mo. 569. In this State if a general demurrer be overruled, and defendant refuses to plead, the court may direct a plea of "not guilty" to be entered for him.—23 Cal. 265, 29 Cal. 503, see 6 Leigh, 638, 21 Wend 403. See *ante*, § 639.

1012. When the objections mentioned in section one thousand and four appear on the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment. [In effect April 9th, 1880.]

When objections must be taken.—Objections appearing on the face of the indictment can only be taken advantage of by demurrer.—47 Cal. 108.

CHAPTER IV.

PLEA.

- § 1016. The different kinds of pleas.
- § 1017. Plea, how put in, and its form.
- § 1018. Plea of guilty, how put in, and when withdrawn.
- § 1019. What plea of not guilty puts in issue.
- § 1020. What may be given in evidence under plea of not guilty.
- § 1021. What is not a former acquittal.
- § 1022. What is a former acquittal.
- § 1023. Conviction or acquittal for a higher offense, effect of.
- § 1024. Defendant refusing to answer, plea of not guilty.
- § 1025. Previous convictions. [Repealed.]

1016. There are four kinds of pleas to an indictment or information. A plea of—

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of offense charged, which may be pleaded either with



to shield the prisoner from a second trial on the same quest, which is manifested by his application for a new trial. 1 McLean, 434; 3 Id. 573; 5 Id. 285; 1 Wall. Jr. 127; 6 Ala. 203, 206 N. C. 307, 64 Ill. 364; 63 Ill. 51, 26 Ind. 347, id. 230, 14 Id. 494, 24 Id. 134, 5 Allen, 216, 2 Pick. 521; 19 Tex. 67.

Jeopardy, when does not attach.—A party is not put in jeopardy until a verdict has been rendered.—6 Bush, 563, 26 Ala. 35 Id. 406, 7 Id. 58; 18 Johns. 187, 3 Pick. 521, 2 Johns. C. St. 497. 26 Ill. 306, 20 N. C. 425, 38 How. Pr. 91, 1 Mach. C. 206, 27 Ind. 131, 64 Mo. 276, 65 Id. 47, 1 Wheat. 51; 4 Wash. C. C. 134, and twice in jeopardy does not relate to Wash. C. C. 44, 7 Port. 187, 30 Ala. 203, 4 Ill. 21, 9 Johns. 187, nor where the jury is discharged from necessity, 2 S. C. 1, 6 Berg. & R. 511, Bald. 95, 1 McLean, C. In a capital case as well as in a misdemeanor.—4 Wash. C. C. account of absence of witnesses—20 Md. 43, see 3 Ben. charge of the jury on account of sickness of defendant will be futile 1 26 Ark. 200, 1 Bal. 65, 18 Johns. 187; 68 N. C. 261, 1 Craw. & D. 121, 2 Car. & P. 44, 2 Leach, C. becomes 1 during the trial, the jury may be discharged, and retried anew—38 Cal. 467, 55 Ala. 19, 2 Mo. 135; 5 How. 246, 9 Feigh. 613, 10 Yerg. 532, 4 Wash. C. C. 400, 1 Leach, & R. C. C. 224, 1 Craw. & D. 211, 1 Leach, C. C. or where insane—4 Wash. C. C. 402. "Legal necessity" is not confined to death, etc., when the discharge becomes inevitable. The escape of a jurymen without warrant the discharge of Halst. 26, 1 Bal. 65, 1 Hale P. C. 28. So, the jury may be discharged on account of inability to agree, and this does not work a second trial.—48 Cal. 321, 33 G. 324, 64 Mo. 376, 65 Id. 47, 10 Pa. St. 579, 18 Johns. 187, if they fail to agree after a reasonable time, 35 Id. 46, but see 64 N. C. 364, 3 Rawle, 48, 43 Ala. 203, they do not agree on the last day of the term—Wash. C. C. 157, 26 Ala. 190, 117 Ill. C. C. 1. A statutory close of court justifies a discharge, which is no bar to a second trial.—2 Wheat. C. C. 43, 5 Ind. 270, 1 Va. Cas. 31, 2 Ill. 107, 7 Port. 187; 7 Ala. 250; 13 Id. 577; 1 Walk. (Miss.) 134; 39 Mo. 276; 10 Yerg. 132; 2 Humph. 70; 8 Id. 507; 13 Q. B. 712; 1 Cox C. C. 489. If defendant is not on his trial, and the

does not relieve a defendant from a second trial—38 Cal. 467, 4 Ala. 272, 4 Stewt. & P. 72; 32 Ind. 420; or from an indictment for a misdemeanor—Id. See 38 Cal. 467. Misconduct of the juror in breaking up the train—4 Haast. 256, 10 Cox C. C. 54, and interference with a jury of evidence of a juror's bias, is ground for withdrawal of a juror and discharge of the jury—1 Curt. 23, see 13 Welf. 34, 3 Id. 56, see also, 4 Wash. C. C. 46, 11 Cox C. C. 12, but not a discharge or application of defendant, or unless the defect was such that he was ready never in jeopardy—1 Bail. 651, 3 Barb. 337, 29 Ark. 37, 3 Id. 57, 1 Cal. 399, 3 Ohio St. 239, 8 Barn. & C. 41, 8 Ad. & E. 82, Cr. & M. 617. The record evidence of proceedings at a previous trial is not admissible to prove former jeopardy—53 Cal. 690. See Const. Prov. ante, p. 17.

1017. Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal. "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of — (naming it), rendered at — (naming the place), on the — day of —."

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court)." [In effect April 26th, 1880.]

Plea—Every plea must be oral—47 Cal. 124; 56 Id. 798. The omission to plead is fatal to the judgment, even after verdict—52 Cal. 481, 53 Mo. 471, 63 Id. 286. On appeal, if the record fails to show arraignment and plea, the court will assume that there was no arraignment and no plea—52 Cal. 481, 3 Wis. 820. A plea in abatement, or a special plea not involving a statement of fact is excepted by the court—46 Mass. 681, and two may be pleaded at the same time and not repugnant—2 Va. Cas. 314. They must always be tried before the general issue—8 Allen, 54, 29 Pa. St. 15, 30 Ala. 279, 31 Id. 289, 31 Id. 301, 40 Id. 344, 3 He 84, 33 Ind. 420. The object of that language jury has not been drawn, summoned and impaneled, according to law must, in some jurisdictions, be made by plea in abatement—11 F. R. 42, 41 N. Y. 365, 6 Brock. 248, 12 Smedley & M. 64. It is too late to raise the plea after the jury is sworn—30 Ala. 425, 36 Id. 511; but see Brock. 14, 3 Parker Cr. R. 21, 15 N. Y. 368, 47 Ala. 54, 2 Ashm. 90. After the impanelling and swearing of several trial jurors, it is in the discretion of the court to entertain the objection—43 N. Y. 78.

Subd. 1. See 49 Cal. 35.

1018. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment or information against a corporation, in which case it may

be put in by counsel. The court may, at any time, judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted. [In effect April 9th, 1880.]

Plea of guilty—The plea of guilty should not be entered without the express consent of defendant given personally, in terms in open court—41 Cal. 481. The court may, in its discretion, allow the plea of guilty to be withdrawn—4 N. H. 142, see 21. When there is reason to believe it has been entered through ignorance, and a remedy from the hope that punishment would be met, the court should permit it to be withdrawn—41 Cal. 481, but it should not be permitted to trifle, by entering a plea and then capriciously withdrawing it the next day. The Supreme Court not reverse an order refusing to permit the plea of not guilty withdrawn—17 Cal. 76.

See *ante*, § 1016, note; 49 Cal. 335.

1019. The plea of not guilty puts in issue every material allegation of the indictment or information. [In effect April 9th, 1880.]

Plea of not guilty—The plea of not guilty puts in issue all the material averments, including that of the *locus delicti*—52 Cal. 470; 48 Cal. 382, 9 Cal. 411. Under this plea insanity may be shown—481. See *ante*, § 1010, note, 49 Cal. 335. Proceedings on plea of not guilty—see *post*, § 1304-1307. The plea of not guilty puts in issue the time of place where the crime was committed, and it imposes on the prosecution the necessity of proving the *locus delicti*—52 Cal. 470.

1020. All matters of fact tending to establish a defense, other than that specified in the third and fourth subdivisions of section one thousand and sixteen, may be given in evidence under the plea of not guilty. [In effect April 26th, 1880.]

Involuntary intoxication.—If a person be made drunk by stratagem, or by the unskillfulness of a physician, he is not responsible for his acts—Parker Cr. R. 235, 31 Cal. 44, see 19 Mich. 401; 543, 40 Conn. 136.

Insanity from intoxication may excuse from punishment for a crime.—If a person be made drunk by stratagem, or by the unskillfulness of a physician, he is not responsible for his acts—Parker Cr. R. 235, 31 Cal. 44, see 19 Mich. 401; 543, 40 Conn. 136. Insanity from intoxication may excuse from punishment for a crime—41 Cal. 481, 48 Cal. 382, 9 Cal. 411, 42 Cal. 411, 43 Cal. 411, 44 Cal. 411, 45 Cal. 411, 46 Cal. 411, 47 Cal. 411, 48 Cal. 411, 49 Cal. 411, 50 Cal. 411, 51 Cal. 411, 52 Cal. 411, 53 Cal. 411, 54 Cal. 411, 55 Cal. 411, 56 Cal. 411, 57 Cal. 411, 58 Cal. 411, 59 Cal. 411, 60 Cal. 411, 61 Cal. 411, 62 Cal. 411, 63 Cal. 411, 64 Cal. 411, 65 Cal. 411, 66 Cal. 411, 67 Cal. 411, 68 Cal. 411, 69 Cal. 411, 70 Cal. 411, 71 Cal. 411, 72 Cal. 411, 73 Cal. 411, 74 Cal. 411, 75 Cal. 411, 76 Cal. 411, 77 Cal. 411, 78 Cal. 411, 79 Cal. 411, 80 Cal. 411, 81 Cal. 411, 82 Cal. 411, 83 Cal. 411, 84 Cal. 411, 85 Cal. 411, 86 Cal. 411, 87 Cal. 411, 88 Cal. 411, 89 Cal. 411, 90 Cal. 411, 91 Cal. 411, 92 Cal. 411, 93 Cal. 411, 94 Cal. 411, 95 Cal. 411, 96 Cal. 411, 97 Cal. 411, 98 Cal. 411, 99 Cal. 411, 100 Cal. 411.

Intoxication—Voluntary intoxication is no excuse for a crime—41 Cal. 481, 42 Cal. 481, 43 Cal. 481, 44 Cal. 481, 45 Cal. 481, 46 Cal. 481, 47 Cal. 481, 48 Cal. 481, 49 Cal. 481, 50 Cal. 481, 51 Cal. 481, 52 Cal. 481, 53 Cal. 481, 54 Cal. 481, 55 Cal. 481, 56 Cal. 481, 57 Cal. 481, 58 Cal. 481, 59 Cal. 481, 60 Cal. 481, 61 Cal. 481, 62 Cal. 481, 63 Cal. 481, 64 Cal. 481, 65 Cal. 481, 66 Cal. 481, 67 Cal. 481, 68 Cal. 481, 69 Cal. 481, 70 Cal. 481, 71 Cal. 481, 72 Cal. 481, 73 Cal. 481, 74 Cal. 481, 75 Cal. 481, 76 Cal. 481, 77 Cal. 481, 78 Cal. 481, 79 Cal. 481, 80 Cal. 481, 81 Cal. 481, 82 Cal. 481, 83 Cal. 481, 84 Cal. 481, 85 Cal. 481, 86 Cal. 481, 87 Cal. 481, 88 Cal. 481, 89 Cal. 481, 90 Cal. 481, 91 Cal. 481, 92 Cal. 481, 93 Cal. 481, 94 Cal. 481, 95 Cal. 481, 96 Cal. 481, 97 Cal. 481, 98 Cal. 481, 99 Cal. 481, 100 Cal. 481.

60, 54 Barb. 342, 46 Id. 625; 32 N. Y. 509; and if, without fault or carelessness, he is misled concerning them, and defends according to the supposed state of facts, he is justifiable, although the facts are in truth otherwise, and there is really no occasion for extreme measures—5 Cal. 202, People v. Miles, 53 Cal. 207. Mere antecedent threats are no excuse for a deadly assault, when no demonstration is made by the party threatening—43 Cal. 261. See Deaty's Crim. Law, title HOMICIDE.

1021. If the defendant was formerly acquitted on the ground of variance between the indictment or information and the proof, or the indictment or information was dismissed upon an objection to its form or substance or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense. [In effect April 9th, 1880.]

Acquittal, when not a bar.—A former acquittal or conviction procured by fraud is no bar—4 Mass. 47; 14 Id. 404; 43 Mo. 79, 32 Ark. 18 Iowa, 239, 4 Blackf. 345, 31 Ill. 469, 7 Ga. 422, 1 Swan, 34, 10 Conn. 54, 26 Id. 205, 9 Ill. 677, 111 Id. 509, 1 Ill. 1, 270, 2 How. St. Tr. 34 Sayers, 6. A judgment of acquittal of burglary, with intent to steal, is no bar to a prosecution for larceny—20 Cal. 67; 14 Ga. 8, 2 Hawks, 3, 4, 12, 117; 14 Ill. 57, so a discharge on a preliminary examination—4 Mo. 608, nor a discharge by a grand jury—2 Astor, 61, 2 Moody & L. 2, 22 see 5 Ga. 8 or where the indictment was quashed—126 Mass. 38 Ark. 261. Evidence that a former indictment had been returned at the ground that the grand jury had not been legally constituted and that the court had ordered the case submitted to another grand jury will not sustain a plea of former acquittal—5 Cal. 130. A former finding of guilty is no bar to a trial on the second—5 Cranch 141, 1 Cash 29, 12 Id. 474, 5 Gray, 83, 120 Mass. 265, 14 Wend. 9, 24 Conn. 250, 2 Dev. & B. 159, 78 N. C. 558, 6 Ind. 532, 22 Id. 347, 36 Mass. 41.

Variance.—Immaterial variance should be disregarded—41 Cal. 23. If the defendant be in fact acquitted on the ground of immaterial variance, he cannot lawfully be prosecuted for the same offense—4 Cal. 236, 1. If the variance is material, it is a bar—41 Cal. 236. Where the indictment charged stealing of five certificates of shares of stock of the No. 750, and the proof showed there was but one such certificate, and not a series of five, it was not a fatal variance—43 Cal. 42 see ante, § 1016, and post, § 1112, see 49 Cal. 393.

1022. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment or information on which the trial was had. [In effect April 9th, 1880.]

Former acquittal.—Where a person is put on trial on a valid indictment, before a competent court and jury, a discharge of the defendant without his consent or from some unavoidable accident or necessity, shall not be a bar to a second trial—44 Cal. 326, 24 Id. 41. So if the defendant be discharged after the jury is impaneled, and before the trial is begun, the accused cannot be again indicted for the same offense—41 Cal. 41, 8 Ala. 951, 16 Id. 741, 44 Id. 93, 64 Id. 93; 8 Barb. 152, 1 Ill. 7 Blackf. 186, 8 Id. 545, 4 Cranch C. C. 232, 2 Calmes, 304, 3 Cond. —

Dev. 491; 3 Ga. 33; 9 Id. 306; 55 Id. 625; 7 Gray, 329; 1 Humph. 253; 5 Ind. 290; 2 McLean, 114; 49 N. H. 55; 14 Ohio, 293; 12 Ohio St. 214; 20 Pick. 336; 23 Pa. St. 12; Thach C. C. 132; 12 Vt. 93; 3 W. Va. 700, but it is otherwise where defendant was not in jeopardy—2 Brewst. 667; 1 Curt. 23; 4 Conn. 432; 7 Gray, 378; 35 Tex. 98; 12 Vt. 93. If, while the jury is out deliberating, and before the expiration of the term, the judge, without calling the jury into court, adjourns for the term, it is equivalent to an acquittal—43 Cal. 379. Surprise, in the sudden breaking down of the case of the prosecution, will not justify withdrawing of a juror—2 Calnes, 365; 2 McLean, 114; 2 Parker Cr. R. 676; 2 Strange, 364; but see *contra*, 13 Ired. 204; 15 Wend. 371.

1023. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal, or jeopardy is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information. [In effect April 26th, 1880.]

Higher offense.—On an indictment for murder, defendant was found guilty of manslaughter, and on a second indictment for murder, his former conviction was a good plea, though a new trial had been granted on his motion—4 Cal. 376; 5 Ill. 278. A conviction of manslaughter was an acquittal of every higher offense, and so of all offenses included in an indictment—35 Cal. 391. If a person is indicted for manslaughter, and the court, without consent of defendant, discharges the jury because it is of opinion that the evidence shows defendant guilty of murder, if he is again indicted for the same killing, he is twice in jeopardy, and is entitled to acquittal—48 Cal. 334. See *ante*, § 1016, *subd.* 3.

1024. If the defendant refuses to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered. [In effect April 9th, 1880.]

Refusal to plead.—If a defendant stands mute, a plea of not guilty can be entered by order of court—125 Mass. 397; 76 Pa. St. 319; 3 Whart. 37; 50 Cox C. C. 439; so if he refuses or declines to plead after demurrer overruled—28 Cal. 274; 29 Id. 562. A refusal to plead does not admit jurisdiction—20 Mich. 371.

1025. Section one thousand and twenty-five of said Code is hereby repealed. [In effect April 9th, 1880.]

CHAPTER V.

TRANSMISSION OF CERTAIN INDICTMENTS FROM THE COUNTY COURT TO THE DISTRICT COURT OR MUNICIPAL CRIMINAL COURT OF SAN FRANCISCO.

- § 1028. Transmission of indictments from the County to District Courts. [Repealed.]
- § 1029. Indictments against a superior judge.
- § 1030. Indictments transmitted to Municipal Criminal Court. [Repealed.]

1028. Repealed. [In effect March 12th, 1890.]

1029. When an indictment is found, or an information filed in a Superior Court against a judge thereof, a certificate of that fact must be transmitted by the clerk to the governor, who shall thereupon designate and direct a judge of the Superior Court of another county to preside at the trial of such indictment or information, and hear and determine all pleas and motions affecting the defense.

CHAPTER VI.

REMOVAL OF THE ACTION BEFORE TRIAL.

- § 1033. When action may be removed.
§ 1034. Application for removal, how made.
§ 1035. Application, when granted.
§ 1036. Order of removal.
§ 1037. Proceedings on removal if defendant is in custody.
§ 1038. Proceedings on removal. Transmission of papers.

1033. A criminal action may be removed from the court in which it is pending

First On the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the action is pending.

Second On the application of the District Attorney, on the ground that from any cause no jury can be obtained for the trial of the defendant in the county where the action is pending. [In effect March 9th, 1887.]

Bias or prejudice of the presiding judge is no legal ground. 28 Cal. 495, 24 Cal. 31, 18 Cal. 105, 12 Cal. 523. That the judge previously in the same case made an erroneous ruling, is no evidence of the existence of bias and prejudice. 24 Cal. 31.

1034. The application must be made in open court and in writing, verified by the affidavit of the defendant or of the district attorney, as the case may be a copy of which application must be served upon the attorney of the adverse party at least one day prior to the hearing of the application. Whenever the affidavit of the defendant shows that he cannot safely appear in person to make such application, because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney, and shall be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a felony, and he has not at the time of such application been arrested or given

bail, or been arraigned, or pleaded, or demurred to the indictment or information. [In effect March 9th, 1887.]

Change of place of trial.—The venue of a case may be changed at the discretion of the court on good cause shown—33 Cal. 567, 44 id. 96, 49 id. 425.

Application for removal.—The affidavit must state facts and circumstances from which the conclusion is deduced, that a fair and impartial trial cannot be had in the county where the indictment is found—1 Cal. 379, 3 id. 412. The affidavit that he cannot have a fair and impartial trial in the county is not alone sufficient—21 Cal. 265; see 18 Cal. 186, nor is the mere fact that thirty or forty persons in the county had subscribed money to procure a lawyer to aid the prosecuting attorney—21 Cal. 265, questioning 5 Cal. 353. A mere opinion or belief set forth in the affidavit, that a fair trial cannot be had, is not sufficient—44 Cal. 95; see 28 id. 495. The application is addressed to the sound discretion of the court—49 Cal. 427; 18 id. 180, 6 id. 155; 53 id. 567, 44 id. 97, 3 id. 410, the exercise of which must be reasonable—53 id. 567, 18 id. 186; to be dispensed of in furtherance of justice—44 id. 95, 6 id. 155, and the order of removal will not be disturbed except in case of gross abuse of discretion—6 id. 155, 18 id. 180. The granting of time to file counter affidavits is in the discretion of the court—22 Cal. 131. The application cannot be made after twelve competent jurors are obtained—49 Cal. 175.

1035. If the court be satisfied that the representations of the applicant are true, an order must be made transferring the action to the proper court of some convenient county, free from a like objection. [In effect March 9th, 1887.]

court, the court from which the action is removed must at any time, upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

Arraignment.—If arraignment had been made in the place where the indictment was found, it need not be made at the place to which the trial is removed—39 Md. 355; 8 Gill, 295; 2 Va. Cas. 162; 58 Ga. 35; 36 Ala. 233; though a double arraignment would not be error—4 Ill. 83.

CHAPTER VII.

THE MODE OF TRIAL.

§ 1041. Issue of fact defined.

§ 1042. How tried.

§ 1043. When presence of defendant is necessary on the trial.

1041. An issue of fact arises:

1. Upon a plea of not guilty.
2. Upon a plea of a former conviction or acquittal of the same offense.
3. Upon a plea of once in jeopardy. [In effect April 26th, 1880.]

Subd. 1. If the indictment charged only manslaughter, and words are interpolated, making it charge murder, and defendant pleads guilty and goes to trial, he may prove the interpolation, and can be tried for manslaughter only—50 Cal. 448. Consent cannot confer jurisdiction to try for any offense other than that charged—50 Cal. 448. See ante, § 1016; see also 29 Cal. 402.

1042. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony, by the consent of both parties expressed in open court and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open court. [In effect February 25th, 1880.]

Trial by jury.—The right of trial by jury is a sacred right, and one secured by the guarantees of the Constitution—43 Cal. 148. See Const. Prov. ante, p. 16. A defendant cannot, without express statutory authority, waive his right to a trial by jury on a plea of not guilty—27 Conn. 281; 16 Mich. 351; 10 Mo. 498; 6 Ark. 601; 5 Ohio St. 283; 12 Id. 322; 43 Wis. 403; 17 Ark. 290; 9 Mich. 193; 38 Md. 259; see 41 Mo. 470; 21 Ark. 228; 20 Ala. L. J. 399. The action of a police magistrate in com-

mitting a minor child to the industrial school, does not amount to a criminal prosecution, nor to procedure according to the course of the common law, and the minor, therefore, is not entitled to a trial by jury—51 Cal. 280. Aliens are not entitled to a jury of one-half aliens—61 Cal. 607. See *ante*, page 16.

1043. If the prosecution be for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant, require the personal attendance of the defendant at the trial. [In effect April 9th, 1880.]

Right to appear in person—42 Cal. 168. See Const. Prov. *ante*, p. 14. It is error to declare a bond forfeited because defendant failed to appear personally at the trial—6 Pac. C. L. J. 450; 23 Cal. 158. See *ante*, § 576, 1016. Distinction between felonies and misdemeanors—see *ante*, § 17. Where one is indicted for a felony, and has been committed to bail, the court should at the commencement of the trial, order him into actual custody—49 Cal. 62.

CHAPTER VIII.

FORMATION OF THE TRIAL JURY AND THE CALENDAR OF
ISSUES FOR TRIAL.

- § 1046. Formation of trial jury.
- § 1047. Clerk to prepare a calendar.
- § 1048. Order of disposing of issues on the calendar.
- § 1049. Defendant entitled to two days to prepare for trial.

1046. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

Impanelling trial jurors—see Code Civ. Proc. §§ 246, 247; see *post*, § 1074, note. If jurors are not drawn and summoned to attend the term of the court, an order may forthwith issue directing the sheriff to summon them—47 Cal. 95, 5 Blatchf. 204, and it is immaterial whether the cause for the necessity arose before or after the commencement of the term—43 Cal. 349, 4 Id. 225; 21 Id. 400. The names of all jurors selected, whether as grand or trial jurors, are to be placed in the same box—6 Pac. C. L. J. 399. A trial jury must consist of twelve, and defendant cannot consent to a less number—48 Cal. 258; 46 Id. 122; 37 Id. 677. The omission of the clerk to insert, in his certificate of the drawing, the date of the order for the drawing, is not a fatal error—6 Pac. C. L. J. 832. If, though legally drawn, they have not been summoned, the court may order them summoned—46 Cal. 47.

1047. The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail. [In effect April 9th, 1880.]

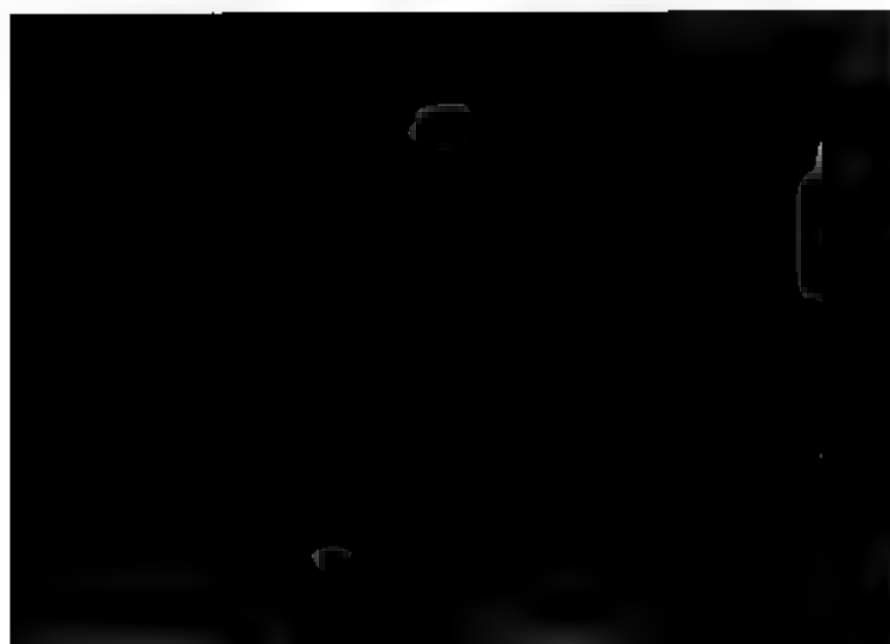
1048. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

- 1 Prosecutions for felony, when the defendant is in custody.
- 2 Prosecutions for misdemeanor, when the defendant is in custody.
- 3 Prosecutions for felony, when the defendant is on bail.

4. Prosecutions for misdemeanor, when the defendant is on bail. [In effect April 9th, 1880.]

A felony is a crime which is or may be punishable with death, or imprisonment in the State prison—see Desty's Crim. Law, § 3, 1 note; see also *ante*, § 17. Every other crime is a misdemeanor—Desty's Crim. Law, § 4, and note; see also *ante*, § 17.

1049. After his plea, the defendant is entitled to least two days to prepare for trial.



CHAPTER IX.

POSTPONEMENT OF THE TRIAL.

§ 1051. Postponement, when, and how ordered.

1052. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day. [In effect April 9th, 1880.]

Postponement of trial.—Sickness of defendant's counsel—4 Cal 188, or surprise at the withdrawal of a witness is a ground—4 Tex 260, 44 Ga. 201. The surprise must be shown by affidavit, or in some other proper form—21 Cal 343. The absence of witnesses is a ground for continuance—6 Cal 249, 28 id 445. A motion on this ground should distinctly state that to which they would testify—45 Cal 63. Where there is a sufficient showing as to their materiality and no apparent lack of diligence, the motion should be granted—46 Cal 150, 41 id 461; 25 id 417. The court will not grant the motion when the absence of witnesses are beyond its process—49 Cal 580, 10 Cal 1st 507, 24 Brev. 304, 2 Halst 220, 1 Miss 6, 8 Gratt 63, 2 Sam 19, and where they had made depositions before the examining court—45 Cal 580, but see 43 Mo. 127, nor, where the facts shown cast suspicion on the good faith of the applicant—46 Cal 150, nor, where he is guilty of laches and delays—29 id 562, 1 Ashm 281, 9 Dana, 20, 12 F. & S. 29, 1 id 23; 12 Gratt 364, 29 id 930, 54 Mo. 214, 64 id 305, 6 Rand 60, 1 Miss 9; 1 Va. Cas. 156, nor, of any connivance—10 Gratt 188, nor, where the testimony sought is immaterial—43 Cal 47, 4 id 208, 3 Brev 304, 17 Ga. 430, 21 Tex 337, 45 id 151, 5 Leigh 715, nor, where the opposite party concedes the fact sought to be proved—34 Ga. 348, 60 id 188; 13 Miss 48, 1 Parker Cr. R. 190, but the admission of the prosecuting attorney, that the absent witness told the prosecuting witness of the fact, will not defeat the motion—54 Cal 245, see 28 id 435, 1 Meigs, 185, 28 Ind 30, 2 Tex 464. A continuance as to one of several defendants does not involve the trials as to another—31 Ind 262.

Affidavit.—The affidavit, on the ground of absence of witnesses, must show due diligence to procure their attendance, setting forth the facts—1 Cal 401, 61 id 211, 8 id 69, 14 id 28, 34 id 663, 6 Pac. C. L. J. 321, 14 Bush 106, 69 Mo. 444, as by exhausting the process of the court or otherwise—4 Cal 28, 34 id 198, 24 id 31, and the service of the process must be described as such as would command obedience under the law—29 id 562, and that the witnesses cannot be readily reached by attachment—47 id 108. It should state that there is reasonable ground to believe that the delay will tend to the furtherance of justice, and that their attendance or testimony will be obtained at the time to which the trial is deferred—11 Cal 10, 41 id 40, 34 id 188, 3 Gratt 635, 10 Ga. 505, 42 Ind 24, 1d 544, 53 Mo. 48, 2 Va. Cas 106, 69 Mo 41, and that he cannot prove the same facts by other witnesses—47 Cal 106, 49 id 63, 24 id 188, 8 id 8, 4 id 230. Where the affidavit contradicted his testimony taken before the grand jury, the application is properly denied—53 Cal 44. So, where the affidavit shows that the witness is a fugitive from justice, and cannot probably be produced—49 Cal 580. See post, § 1423.

TITLE VII.

Of Proceedings after the Commencement of the Trial and before Judgment.

- CHAP. I. CHALLENGING THE JURY, §§ 1055-88.
- II. THE TRIAL, §§ 1093-1131.
- III. CONDUCT OF THE JURY AFTER CAUSE IS SUBMITTED TO THEM, §§ 1135-43.
- IV. THE VERDICT §§ 1147-67.

CHAPTER I.

CHALLENGING THE JURY.

- § 1055. Definition and division of challenges.
- § 1056. Defendants cannot sever in challenges.
- § 1057. Panel defined.
- § 1058. Challenge to the jury defined.
- § 1059. Upon what founded.
- § 1060. When and how taken.
- § 1061. Exception, if sufficiency of the challenge be denied.
- § 1062. If exception overruled, court may allow denial, etc.
- § 1063. Denial of challenge, how made, and trial thereof.
- § 1064. Challenge for bias in summoning officer.
- § 1065. Proceedings, if challenge allowed.
- § 1066. Defendant to be informed of his right to challenge.
- § 1067. Kinds of challenges to individual juror.
- § 1068. Challenge, when taken.
- § 1069. Peremptory challenge, what, and how taken.
- § 1070. Number of peremptory challenges.
- § 1071. Definition and kinds of challenge, for cause.
- § 1072. General causes of challenge.
- § 1073. Particular cause of challenge.
- § 1074. Ground of challenge for actual bias.
- § 1075. Exemption not a ground of challenge.
- § 1076. Causes of challenge, how stated.
- § 1077. Exceptions to challenge and denial thereof.
- § 1078. Challenge, how tried.
- § 1079. Triers, how appointed. Majority may decide. [Repealed.]
- § 1080. Oath of triers. [Repealed.]
- § 1081. Juror challenged may be examined as a witness.
- § 1082. Rules of evidence on trial of challenge.
- § 1083. Decision of court to be entered.
- § 1084. Instructions on trial for actual bias. [Repealed.]
- § 1085. Verdict of triers, and its effect. [Repealed.]
- § 1086. Challenges, first by the defendant.
- § 1087. Order of challenges.
- § 1088. Peremptory challenges, when may be taken.

155. A challenge is an objection made to the trial jurors, and is of two kinds:

Pen. Code.—25.

1. To the panel.
2. To an individual juror.

Challenges.—The court may, of its own motion, for any good reason, excuse a qualified juror—32 Cal. 43; see 2 Mason, 91; 18 Gratt. 767; 20 Ga. 164, 2 Dev. & B. 221. The rejection of a juror by the court does not prejudice the defendant, and is not matter available in error—32 Cal. 46, 17 Id. 80; 7 Id. 140; 4 Gray, 19.

1056. When several defendants are tried together, they cannot sever their challenges, but must join therein.

Severing challenges.—Where defendants elect to be tried jointly they cannot sever their challenges—8 Cal. 301; 26 Ala. 107; 18 Oala, 22; 10 R. I. 159.

1057. The panel is a list of jurors returned by a sheriff to serve at a particular court, or for the trial of a particular action.

1058. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

1059. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

Challenge to the panel.—A challenge to the panel is based on



In writing.—It should be in writing—1 Mann. (Mich.) 451; 1 Car. & K. 235, 519. An amended challenge takes the place of the original—48 Cal. 256, see *post*, § 1068, *note*.

Trial by the court.—An opinion imperfectly formed, or one based upon the supposition that facts are as they have been represented, may be proved on such a challenge—2 Parker Cr. R. 16, 13 Ma. 675. A fixed opinion of guilt or innocence need not be proved when the challenge is for favor—14. And any fact or circumstance from which bias and prejudice may be inferred is admissible in evidence—1 Denio, 281; see 3 id. 131. It is not sufficient to prove that a juror has formed an unfavorable opinion of the defendant—2 Barb. 216, see *post*, § 1076, *note*.

1062. If, on the exception, the court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge.

Challenge to panel. An amended challenge is a substitute for the original—48 Cal. 256.

1063. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, or of the phonographic reporter, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

Evidence on challenge.—The defendant cannot offer his *ex parte* affidavit in evidence in support of the challenge—48 Cal. 256.

1064. When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

Bias on summoning. This section only allows a challenge of the panel, on account of such bias in the officer or person serving the venire as is mentioned in § 473—49 Cal. 178. Where the sheriff, acting, had formed and expressed an opinion that defendant was guilty, the challenge on the ground of bias, ought to have been allowed—40 Cal. 597. See 10 Cal. 50.

1065. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court

emptory challenges—24 *Id.* 11. Without naming the juror, or stating facts coming to his knowledge, a demand or offer to challenge after the twelfth juror is accepted, but not sworn, may be properly refused. 10 *Cal.* 54. The defendant may challenge peremptorily at any time after the name is drawn and before the juror is sworn to try the cause. 47 *Cal.* 123, 24 *Id.* 13, 10 *Id.* 59; 4 *Id.* 199. On one cause shown, the court, at any moment before the case is opened or the juror is sworn, will permit a peremptory challenge—49 *Cal.* 241, 61 *Ala.* 30, 3 *Leig.* 768; 23 *Pa.* 81 12.

1070. If the offense charged be punishable with death, or with imprisonment in the State prison for life, the defendant is entitled to twenty and the State to ten peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the State to five peremptory challenges. [Approved March 30th, in effect July 1st, 1874.]

1071. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either

1. General—that the juror is disqualified from serving in any case, or,
2. Particular—that he is disqualified from serving in the action on trial.

1072. General causes of challenge are—

1. A conviction for felony.
2. A want of any of the qualifications prescribed by law to render a person a competent juror
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

1073. Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this Code as implied bias.
2. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this Code as actual bias. [Approved March 30th, in effect July 1st, 1874.]

Particular causes of challenge are of two kinds—43 Cal. 183.

Subd. 1. That he had formed and expressed an opinion as to the guilt of the prisoner or his shown feelings of hostility to him, is a good ground of challenge—3 Wend. 344, see 43 Cal. 183.

Subd. 2. The mere formation of hypothetical opinions founded on hearsay or information which does not support a challenge—43 Cal. 183, provided he had no feeling of malice or ill-will against defendant—43 Cal. 183. The challenge must be entered on the minutes, and application be made to have triers appointed—41 Cal. 29. See *post*, § 1075, note.

1074. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted or to the defendant.
2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.
3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

Subd. 8. That he had formed or expressed an unqualified opinion is a sufficient ground—4 Cal. 228, 7 id. 113, 8 id. 361, 41 id. 64, 41 id. 51, 41 id. 184. The fact that the juror has a "fixed and positive opinion" as to the question of a defendant's guilt does not constitute a basis of challenge for implied bias—42 Cal. 107. He is not disqualified if he has formed an opinion from what he has heard, which would be quite sufficient to move, if it is not suggested, a "thoroughgoing acquiescence in a fair trial"—43 Cal. 28, 29 id. 31, 37 id. 146, 40 id. 148, 41 id. 149. A juror is not disqualified who "has formed an opinion" as to the words "guilt" and "innocence." We can express a strong opinion as to the guilt of a defendant of law, but not as to Cal. 41, 61 id. 20, 81 id. 30, 81 id. 33, 81 id. 34. But at the hearing and a proper view with the trial and he is not disqualified on the ground of having formed an opinion. There is a wide difference between a "fixed" opinion formed after hearing the facts and a mere impression or hypothetical opinion—46 Cal. 19, 1 id. 142, 47 id. 147, see 51 id. 34.

Subd. 9. See 2 Cal. 259, 24 id. 17, 13 Wend. 351. That he would not convict on circumstantial evidence is a good ground of challenge—54 Cal. 401.

1075 An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Where a person whose name is on the poll-tax list only is sworn to try a case, and before it receives him as a juror without objection, and after verdict, raises the objection, it is incompetent—43 Cal. 1, 51 id. 405. A juror who accepts a juror knowing him to be disqualified, is estopped from afterward availing himself of such disqualification—6 Cal. 42. The right of exemption of a juror is not a ground for challenge—4 Cal. 18. A privilege of a juror cannot be technically regarded as a ground of challenge as collation—1 id. 4, 11 Tex. 257, deathless or other infirmity—20 Cal. 18, see Law R. 3, 11 L. Cas. 309, or holding exoneratory positions—51 Mo. 355. The excusing of a juror for such reasons is within the discretion of the court—48 Ala. 307; 20 Ga. 156.

1076. In a challenge for implied bias, one or more of the causes stated in section one thousand and seventy-four must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section one thousand and seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the

Triers.—Objection to the appointment of triers must be made at the time, and the grounds of objection, if overruled, be reserved by exceptions—43 Cal. 167. When triers are not asked for, the parties are bound by the decision of the court—13 Ark. 720, 1 Mann. (Mich.) 451; 4 Wend. 229, 21 Id. 509. The trial should be conducted in the presence of the court—19 Ga. 102.

1081. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

Juror as witness.—A Chinese defendant has a right to ask a proposed juror whether he would as readily believe Chinese testimony as that of white men—6 Pac. C. L. J. 666; *id.* 880.

1082. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

1083. The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court. [Approved March 30th, in effect July 1st, 1874.]

Determination of challenge. The action of the court in allowing a challenge for implied bias is not the subject of an exception—51 Cal. 496, 40 Ill. 67, as distinguished from disallowing the challenge—45 Id. 144. The Supreme Court will not overrule the action of the lower court in denying a challenge, unless it is apparent that it abused its discretion—47 Cal. 396. When the court overrules a challenge and the prisoner excepts, the exception is to the court's overruling the challenge—41 Cal. 33. The decision of the question of fact raised by the challenge is final, and not subject to review on appeal—40 Cal. 166. Where doubts, more or less grave, as to the actual state of mind of the juror, still remain, the challenge for implied bias should be allowed—43 Cal. 531. See *ante*, § 1076, and *post*, § 1110.

1084, 1085 of said Code are repealed. [Approved March 30th, in effect July 1st, 1874.]

See 40 Cal. 169; and *ante*, §§ 1074-1076.

1086. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins.

1087. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel.
 2. To an individual juror, for a general disqualification.
 3. To an individual juror, for an implied bias.
 4. To an individual juror, for an actual bias.
- See 27 Cal. 678, 45 Id. 323.

1088. If all challenges on both sides are disallowed either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted.

If the prosecution passes the juror to the defendant, who declines to challenge, the prosecution may then interpose a peremptory challenge to a juror before he is sworn in—49 Cal. 569. See 27 Cal. 678.

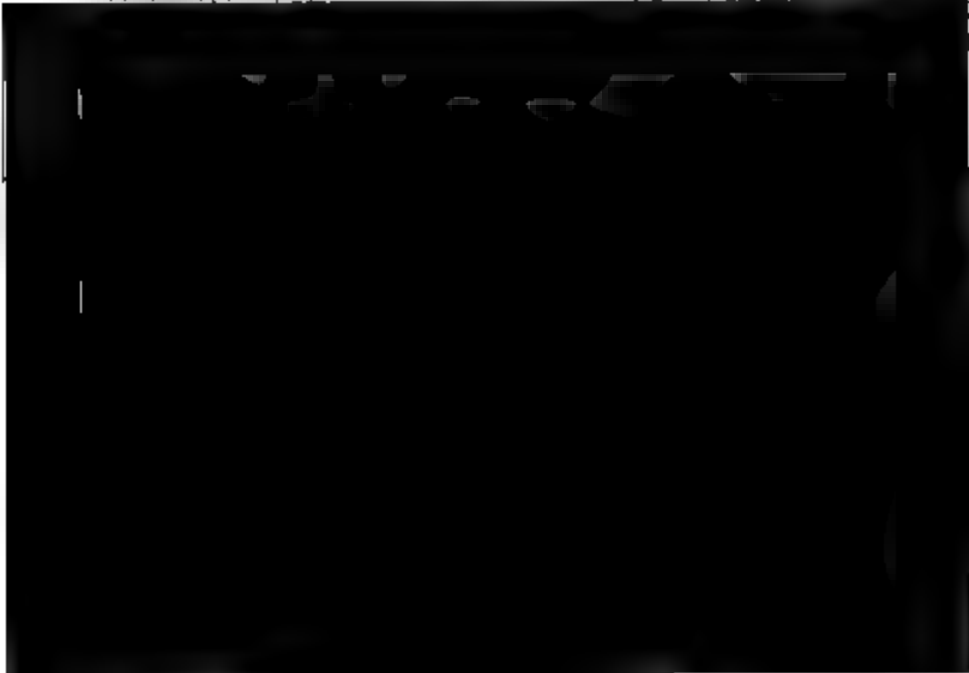
CHAPTER II.

THE TRIAL.

- § 1093. Order of trial.
- § 1094. When order of trial may be departed from.
- § 1095. Number of counsel who may argue the case.
- § 1096. Defendant presumed innocent. Reasonable doubt.
- § 1097. Reasonable doubt as to degree convicts only of lowest.
- § 1098. Separate trials.
- § 1099. Discharging defendant that he may be a witness.
- § 1100. Same.
- § 1101. Effect of such discharge.
- § 1102. Rules of evidence in civil applicable to criminal cases.
- § 1103. Evidence on trial for treason.
- § 1104. Evidence on trial for conspiracy.
- § 1105. When burden of proof shifts in trials for murder.
- § 1106. Evidence on a trial for bigamy.
- § 1107. Evidence upon a trial for forging bank-bills, etc.
- § 1108. Evidence upon trial for abortion and seduction.
- § 1109. Evidence on a trial for selling, etc., lottery tickets.
- § 1110. Evidence of false pretenses.
- § 1111. Conviction on testimony of accomplice.
- § 1112. Proceedings, if evidence show higher offense than charged.
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- § 1114. Proceedings, if jury discharged for want of jurisdiction of
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- § 1115. Proceedings in such case, when offense committed in the
State.
- § 1116. Same.
- § 1117. Proceedings, if jury discharged because the facts do not con-
stitute an offense.
- § 1118. When evidence on either side is closed, court may advise jury
to acquit.
- § 1119. View of premises, when ordered, and how conducted.
- § 1120. Knowledge of juror to be declared in court, and he to be
sworn as a witness.
- § 1121. Jurors, separation of, during trial.
- § 1122. Jury, at each adjournment, must be admonished, etc.
- § 1122. *Juror unable to perform his duties, proceedings.*

- § 1124. Court to decide questions of law arising during trial.
- § 1125. On indictment for libel, jury to determine law and fact.
- § 1126. In all other cases court to decide questions of law.
- § 1127. Charging the jury.
- § 1128. Jury may decide in court, or retire in custody of officers.
- § 1129. Defendant appearing for trial may be committed.
- § 1130. If district attorney fails to attend, court may appoint.

1093. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court:

1. If the indictment or information be for felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.
 2. The district attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.
 3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.
- 

of trial.—An order excluding such of the jurors as were not fit to try the case is not a deprivation of the right of public Cal. 494. Persons accused of crimes alleged to have been committed before the Penal Code to effects of the trial, and the forms of procedure provided in the Code to be in the hands of the jury, if the jury should appear who is liable to a full jury with them may be grounds for a new trial. 15 Cal. 416.

1. The failure of the clerk to read the indictment is not a
 2. where it appears that the jury were fully informed of the
 3. charge—53 Cal. 44

2. The opening of the case by the prosecution is a simple statement of the theory of the case without argument or elaboration, introduction of proofs necessary to support the indictment--

2. The court may exclude from the court-room all witnesses except one under examination - 33 Cal. 491. In general, the court has application of either of the parties direct and all witnesses under examination shall have the court - 33 Cal. 491, 1 C. C. 120, see ante ¶ 66, and at any period of the case - 1 C. C. 121. It is in the sound discretion of the court - 33 Cal. 491. A witness be present in disobedience to the order excluding him in contempt, but it is no ground for rejecting his testimony - 3 W. Va. 70. See note to subd. 2. See EVIDENCE, post, § 100.

of prosecution.—The prosecution cannot be compelled to call particular witnesses.—12 Cal. 60.

of defendant - A defendant ought not to be deprived of the presence of a witness who may be had at the trial - 2d Cal. Criminal Prosecutions (he accused shall have the process of a to compel the attendance of witnesses in his behalf. See art. 141). Defendant as witness - *see ante* p. 14. Defendant tied to a chair particulars of the evidence relied on to be inconsistent. 34 Cal. 30, but *see contra*, under the practice. *States* - 1, Pick. 43, 1 Gray, 406, 2 Id. 454, 4 Id. 11, 13 Pick. 426, 1, 12, 13, 107 Mass. 323.

of witnesses. Witnesses shall not be unreasonably detained and in any room where criminals are actually imprisoned - Art 1, § 9.

2. Where defendant is surprised at the exclusion of evidence on to establish his point, he may apply for leave to introduce testimony - 7 Cal. 400. The defendant is not bound to testify to rebut the testimony which tends to prove his case by other testimony of the prosecution - 3 Cal. 425. See post, this case.

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as to the whole case—41 Cal 439; 36 Id. 522. The counsel for the prisoner is not entitled to make his argument when the prosecution closes. It is to be made when the evidence is first introduced—43 Cal 349. The court may limit counsel to a proper, reasonable, and pertinent argument in the present case to the issues. It is also not an error to refuse to allow counsel to be heard on a matter which is not a proper subject for argument—41 Cal 581. The limitation that in no case is it to be a subject for argument is an opportunity to make a final defense—41 Cal 581. As a general rule, reading law to a jury is objectionable, but there are cases where it may be allowed, by way of illustration, as to the instructions of the court—41 Cal 70.

Subd 8. Charge of court. A written charge may be made by the defendant—45 Cal 651, but the court cannot deliver a charge without defendant's consent—41 Cal 384, but with his consent or the initial consent of the prisoner, it may—41 Cal 384. The entry in the minutes of the court, that the court read a charge orally, a written charge, and a charge by way of comment, must be as a matter of course—41 Cal 384. A defendant is not allowed to make a charge except to the extent that the court may permit—41 Cal 384, and the court may not refuse to read a charge except for the objection of a defendant to comment, and the court may, upon the refusal of a defendant to be cross-examined, read the whole case, and for the court to permit such comments—41 Cal 384; 36 Id. 522.

Reading a deposition to the jury in the absence of the defendant either before or after retiring, is error for which a new trial will be granted—51 Cal 12. See § 1093, 1345.

The Constitution does not prohibit judges from determining and charging a jury whether there is any evidence with regard to a fact or finding of fact, in a fact on which a judgment may depend—41 Cal 186. So where there was no evidence to prove the fact of a slaughter or excuse of homicide, it is not error to charge that it was a wrongful death—41 Cal 186, and prove that it was the first degree murder—41 Cal 186. The jury is not to be tested by the testimony of the testimony—41 Cal 186. But a court may not refuse to read the testimony—41 Cal 186. The jury to determine whether the evidence is sufficient to prove a fact—41 Cal 186, 187, 188, 189, 190, 191, 192, 193, 194, 195. If the evidence appears to the jury to be sufficient to prove the fact, the prosecution is that it was fairly taken down by the jury according to the provisions of the code—45 Cal 651. See § 1093.

Evidence may be such as to justify the court in charging that the jury believe defendant killed deceased, and that before doing so be declared it to be his intent to kill, the killing was done with malice and deliberation—45 Cal 651.

The charge given by the court on its own motion is no part of the judgment roll, and cannot be reviewed on appeal from the judgment—44 Cal 58. If the court refuses a charge once clearly given, it is dilatory to inform the jury that this is the reason for the refusal—44 Cal 590, 1341, 172, 173, 174.

Instructions. An instruction should be based on evidence—41 Cal 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

ance of evidence, defendant should ask the court to make it more explicit—49 Cal. 630. An instruction that there was a conspiracy, and that defendant was murdered in pursuance of the conspiracy, and that the verdict should be guilty, is not erroneous—49 Cal. 650. See *post*, § 1127.

1094. When the state of the pleadings requires it, or in any other case for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

It is within the discretion of the court to depart from the order prescribed in the preceding section as to arguments of counsel—49 Cal. 155. It is competent for a court to require the counsel for the defendant to open and the counsel for the prosecution to close—49 Cal. 160. Where nothing to the contrary appears on the record, the presumption is that the court had good reason for allowing associate counsel to conclude the argument before the jury—46 Cal. 363; see 47 Cal. 105, 48 Cal. 355.

1095. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side. [In effect April 9th, 1880.]

In a capital case, the court may allow more than two counsel to address the jury on each side—49 Cal. 236, see 43 Cal. 153. See *Const. Prov. ante*, pag. 17. See *ante*, § 1093, sub 1 5, note. The order of argument is subject to the discretion of the court—see *ante* § 1094, and note; and see 55 Cal. 293.

1096. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Burden of proof.—In criminal cases, the prosecution is required to prove two things, first, that the crime has been committed, and second, that it was committed by the person charged, and by no other. 31 Cal. 567; see 24 Cal. 360; 28 Ala. 60; *Moore v. State*, 11 Cal. 40. Without some evidence tending to show that the person charged committed the crime, the question as to the person is not raised. 31 Cal. 567. That a person is to be acquitted if he is proved by the extra-judicial confession or statements of the person charged to have committed the crime, is not a rule. 31 Cal. 568, 569; 35 Cal. 357. There must be some evidence tending to show that a crime has been committed. 31 Cal. 568, 569; 32 Cal. 51; see 15 Wend. 148; 26 Me. 41; 22 N. H. 400; 6 W. 100; 4 Mo. 219. Where there is an entire want of evidence of the commission of the crime, the statements made by the person charged to the jury are not to be taken into account. 31 Cal. 568. The burden of proof is on the prosecution to prove the crime charged. 31 Cal. 568, 569; 32 Cal. 51; 33 Cal. 357. It is an essential circumstance to prove the crime, that the person charged is the person who committed the crime. 31 Cal. 568, 569; 32 Cal. 51; 33 Cal. 357. The burden of proof, when shifts—see *post* N. H. 621; 7 Iowa, 252.

1097. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

See *ante*, § 1095, note.

Instances of conviction of lower offense—4 Cal. 376, 5 id. 278, 6 id. 443, 17 id. 362, and 18 id. See *ante*, § 1095, note 3.

1093. When two or more defendants are jointly charged with a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly charged may be tried separately or jointly in the discretion of the court. [In effect April 9th, 1880.]

Separate trials. A defendant in a joint indictment has a right to demand a separate trial, or to waive the right. 8 Cal. 136, see 5 id. 184. Where defendants waived separate trials, but before the jury was sworn moved for separate trials it was within the discretion of the court to refuse the application—55 Cal. 236. One being to be so tried, and being tried, one may be a witness for the other—5 Cal. 134, 20 id. 440. 2 Humph. 99; 6 Mo. 1, 1 Ga. 66, 4 Wash. C. 1428.

1099. When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged, that he may be a witness for the people. [In effect April 9th, 1880.]

Discharge.—The discharge must be at the trial before defendant has gone into his defense, by the court of its own motion, or on application of the district attorney—48 Cal. 259. A defendant cannot be discharged from a trial of a joint indictment except in the cases provided by statute. 11. On motion for a separate trial is a complaint that the defendant is prejudiced by the presence of his codefendant. A court may only discharge a defendant if it is evident that he cannot be tried against himself consistently with the defendant of a joint charge. 10 Cal. 104, 11 id. 104, 12 id. 104, 13 id. 104, 14 id. 104, 15 id. 104, 16 id. 104, 17 id. 104, 18 id. 104, 19 id. 104, 20 id. 104, 21 id. 104, 22 id. 104, 23 id. 104, 24 id. 104, 25 id. 104, 26 id. 104, 27 id. 104, 28 id. 104, 29 id. 104, 30 id. 104, 31 id. 104, 32 id. 104, 33 id. 104, 34 id. 104, 35 id. 104, 36 id. 104, 37 id. 104, 38 id. 104, 39 id. 104, 40 id. 104, 41 id. 104, 42 id. 104, 43 id. 104, 44 id. 104, 45 id. 104, 46 id. 104, 47 id. 104, 48 id. 104, 49 id. 104, 50 id. 104, 51 id. 104, 52 id. 104, 53 id. 104, 54 id. 104, 55 id. 104, 56 id. 104, 57 id. 104, 58 id. 104, 59 id. 104, 60 id. 104, 61 id. 104, 62 id. 104, 63 id. 104, 64 id. 104, 65 id. 104, 66 id. 104, 67 id. 104, 68 id. 104, 69 id. 104, 70 id. 104, 71 id. 104, 72 id. 104, 73 id. 104, 74 id. 104, 75 id. 104, 76 id. 104, 77 id. 104, 78 id. 104, 79 id. 104, 80 id. 104, 81 id. 104, 82 id. 104, 83 id. 104, 84 id. 104, 85 id. 104, 86 id. 104, 87 id. 104, 88 id. 104, 89 id. 104, 90 id. 104, 91 id. 104, 92 id. 104, 93 id. 104, 94 id. 104, 95 id. 104, 96 id. 104, 97 id. 104, 98 id. 104, 99 id. 104, 100 id. 104.

1100. When two or more persons are included in the indictment or information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, and he may be a witness for his codefendant. [In effect April 9th, 1880.]

When joint defendants are separately tried, each may be a witness for the other. 5 Cal. 184, 20 id. 440, 2 Humph. 99, 6 Mo. 1; 1 Ga. 474; Wash. C. C. 428.

1101. The order mentioned in the last two sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

Discharge from indictment an acquittal. 24 Cal. 40, see 43 id. 21.

1102. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this Code.

Name of defendant.—It may be proved that defendant was known by the name used in the indictment, and also by another name. *People v. [redacted]*. Where a person indicated by his initials, if it is proved he is so known by a pit juror, and if so proved a fact, it may be considered. 40 Ark. 211. The label of a bill filed in the court in support of the charge is a variation is not sufficient. 42 Ark. 114. Where a name was used in a bill, and it is proved that he usually is known by that name, it is sufficient. *People v. [redacted]*. Whether a person is as well known as a question of reputation, custom, and usage. *People v. [redacted]*, 100 Cal. 100.

Upon the issue as to the name of the defendant, the fact that a person is known by the same name, who answered on her name, is a proper consideration of the jury. 40 Me. 414. If there is a bill of indictment of the name as specified in the indictment, it is sufficient to show that the defendant is known by the name. *People v. [redacted]*, 100 Cal. 100.



consent—6 Miss. 646. The existence of a fact does not raise a rebuttable presumption of the existence of another fact—41 Cal. 215.

No inference of guilt can be drawn from the prisoner's declaration that he did not do it, if he testifies in his own behalf—36 Cal. 522; 39 id. 704; 40 Vt. 235; see 103; *contra*, 65 Me. 200; 57 id. 574; 59 id. 298; but where the prisoner, when testifying in his own behalf, fails to explain a material circumstance, the same presumption arises as from such a statement by another witness, if in his power to give it—56 N. Y. 313.

Where accused is so situated that he could explain the material evidence against him if innocent, and he fails to do so, he is presumed that the proof, if produced by him, instead of not, would tend to sustain the charge—5 Cush. 295.

The omission of a party to produce evidence showing that he was on a certain day, or how he became possessed of a given money, or other property, is not conclusive against him, but creates a strong presumption of guilt; it is a question for the jury—N. Y. 501; 43 Barb. 463. The omission of a party to make a statement, when he could have probably explained some facts bearing against him, is a proper subject for the consideration of the jury—14 Gray, 357.

Recent possession. Recent possession of stolen property is *prima facie* evidence that the possessor is guilty—23 Cal. 32; *contra*, that possession of property recently stolen, unaccounted for or unexplained, is presumptive evidence of guilt—1 Conn. 575; 2 Ind. 67; 8 Jones, (N. C.) 413; 65 N. C. 523; 12 Kan. 550; 235; 41 id. 48; 24 id. 31; 1 Greene, (Iowa) 106; 25 Iowa, 57; 214 Mass. 23; 20 Iowa, 413; 41 id. 217; 72 N. C. 432; 12 id. 330; 480; 24 Grant, 864; 42 Miss. 650; 43 N. Y. 175; 30 Miss. 654; 33 id. 407; 52 id. 615; 31 Mo. 465; 51 Vt. 257; 13 Cox C. C. 273; 279. It is not of itself sufficient to convict—35 Cal. 220; 51 id. 38; 41 id. 123; 27 id. 407; 20 id. 178; 18 id. 332; 16 id. 68; 6 F. J. 93; 41 Tex. 480. It is not *prima facie* evidence of burglary—57, 4 F. J. 1. It is a proper subject for the consideration of the jury.



as of the injured party tending to exculpate the prisoner
excluded—33 Cal. 100.

Evidence of a conversation between a co-conspirator and a person of defendant, in which admissions are made, is a fact for the jury. A conversation between a co-conspirator and a person of defendant, in which admissions are made, is a fact for the jury. A conversation between a co-conspirator and a person of defendant, in which admissions are made, is a fact for the jury.

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t with a very imperfect knowledge of the language is not
to testify to a conversation in which a confession was made
of understand the whole of it—did he hear conversations
persons with the witness and say to him that the fact
in his recollection was that he said that 1500. The de-
the witness for the conversation. The address is—47
vidence to prove that he had said the conversation
years before the fact that the defendant had been
is afraid of the witness and the witness is afraid of
those persons who have been proved to be cross-exam-
by the witness a substance of conversation, though it re-
same subject. (Harker 114)

It cannot introduce statements of deceased concerning the attorney's conduct in which he was wounded, made after he was wounded, but when an "is right mind and not" 41 C.J. 45, 32, 100, 45, 140, 6 Pac. 1, 17, 12 and the 1 puts into the realm of belief of deceased in the on the point of credibility or competency—51 C.J. 59, 43

[illegible]

confessions - & confessions and admissions is ought to be very
valuable in fact they are not intended to be raised as evi-
dence in a trial. Thus it is held in *People v. Smith*, a new proof
under the 1890 act, that a confession made by a defendant
after arrest is not admissible in evidence. *People v. Smith*, 107
Cal. 67. This may be a good rule to apply to the case by
the *People v. Smith*. A witness may testify to the fact that he
saw the defendant through the newspaper, but he only
saw the defendant in the paper, not in the trial, but he only
saw the defendant in the paper. The prisoner is entitled to
a full confession - & Ala. 59; 20 in 54, but the defend-

analogy to the nature of the charge—43 Cal. 137, 6 Bos. & M. 437, 3 Pick. 462. It must not be to a particular reference to the whole case—4 Cal. 117, 47 Ala. 540, 51 Ill. 220, see 134d 477, Thach C. C. 230, and must have reference to a fact after the commission of the crime—40 Pick. 394. A person accused of crime is entitled to the a character for ordinary fairness and which cannot unless he himself calls it to put it in issue—41 Cal. 140. A bad character of defendant may only be given when he attempts to be shown that is the character for a bad character for murder—43 Cal. 236. The failure of defendant to produce evidence of good character cannot be considered a circumstance against him—53 N. Y. 452, 38 Me. 220. Deane 222, see 40 Me. 404, 6 Parker Cr. R. 120.

Admissibility of evidence. Proof of the contents of possession of the adverse party is admissible after notice of the originals—2 Dev. 411, *contra*, 8 Port. 611. Where a party is asked if he had signed a paper of a certain tenor, and he says he did he examines the original, it is not error to answer in evidence—4 Cal. 165. The existence of a copy may be proved by reputation—41 Cal. 652, Thach C. C. 130. A tendency to prove a particular charge, it is admissible. It also tends to prove another separate and distinct—406, 10 387, 411 132.

Where evidence is offered on the part of the defendant if it is admissible, the better practice is to allow the character of the evidence to be shown. Evidence of the prior commission of a crime wholly distinct from the crime in issue, is not, as a general rule, admissible—50 Cal. 321, 80, 71 Pa. St. 60, 2 Ark. 250, 69 N. C. 400, see 1 Wheel. C. C. 30, 5 Humph. 9.

There is a wide distinction between immaterial and irrelevant evidence—43 Cal. 238. It may be material, and still be irrelevant—34. Where irrelevant testimony is calculated to prejudice the minds of the jury it is error to receive it—40 Cal. 302, 50 Cal. 307, 13 Ind. 184.

Ruling out evidence. Rules of evidence. The rules of evidence are the same in both civil and criminal cases. Immaterial and irrelevant evidence may be ruled out—882, 1 101. The objection that evidence is immaterial is proper when it is not material to the issue—44 Cal. 338. Although irrelevant evidence is not prejudicial, it is not admissible—4 Cal. 130.

A party cannot be precluded from giving evidence which is material to the issue—44 Cal. 338. A party cannot be precluded from giving evidence which is material to the issue—44 Cal. 338.

A party objecting to the admission of evidence must do so at the time it is offered, or before the jury is sworn—44 Cal. 338. It is not sufficient for the defendant to object to the admission of evidence after the jury has been sworn—44 Cal. 338. A party objecting to the admission of evidence must do so at the time it is offered, or before the jury is sworn—44 Cal. 338.

If evidence competent for a particular purpose is excluded, it is not error to exclude it for another purpose—44 Cal. 338. If the purpose was to prove a fact, and the evidence was competent for that purpose, it is not error to exclude it for another purpose—44 Cal. 338. A party objecting to the admission of evidence must do so at the time it is offered, or before the jury is sworn—44 Cal. 338. It is not sufficient for the defendant to object to the admission of evidence after the jury has been sworn—44 Cal. 338.

writing cannot be tested by placing before him irrelevant
contradict his testimony as to the handwriting contained
Blanch 300 In the case of the above papers to add that no
one can be produced, the handwriting may be proved by
-22- 23- 13-

When handwriting is proved by comparison, the original document must first be proved, and duplicates taken of the copy which is then to be compared with it. Where a party has a copy of a document which is to be compared with a copy of a document which is to be compared with it, the original document must first be proved, and duplicates taken of the copy which is then to be compared with it. Where a party has a copy of a document which is to be compared with a copy of a document which is to be compared with it, the original document must first be proved, and duplicates taken of the copy which is then to be compared with it.

Short-hand notes of statements of defendant, taken from
ers. are not complete testimony of Par. (L. 343, 1001
of same witness who deposes that the bag was in which
money was hidden, stood by contact of 1000 to 1000
before 1000 to 1000, 1000 to 1000, 1000 to 1000
testimony given at state bar address, taken through
er-343, 1001, 1000 to 1000, 1000 to 1000, 1000 to 1000
admission, taken from N. 11, 4.

Advertisements may be read to the jury, in order to prevent of the witness, but newspapers cannot be put in evidence. The extent to which they may be read to the jury is not settled. The court—1 Ch. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. When a writing contains both legal and illegal matter, the court is authorized to expunge the illegal part, but only to the extent of the illegal part.

Adultery Proof of notoriety is as material as proof of
 a. m. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847,

[illegible]

and that it belonged to the complainant—5 Allen, 507; see 11 Bl. 34. On a trial for embezzling United States bonds, it is not necessary to show that the several bonds were misappropriated by separate or distinct acts, to justify a conviction on each of the counts which charged a grand larceny—10 Mass. 187. Other acts of embezzlement may be charged in the same indictment on a question of guilty intent—1 Allen, 53, 10 Bl. 34. A copy of an agreement made between the defendant and the creditor is not admissible without first accounting for the original—Cal. 64.

Gambling.—The proof of gambling is necessarily inferred from possession and use of implements for gaming—41 N. H. 244. Texas, from the use of which the defendant may be inferred to have been guilty of gambling—10 Mass. 187. It is not necessary to prove that the defendant was actually engaged in gambling, but it may be inferred from circumstances—40 N. H. 244. A partner in the game is a accomplice requiring confession to be corroborated—35 Ark. 43.

Homicide, burden of proof.—The prosecution are only bound to introduce evidence on each charge they think proper—1 red 34. At the trial, the jury may be instructed that any time previous to the death of the defendant, the defendant may be charged with the death of the defendant—18 Tex. 34. A day or more after the death of the defendant, the defendant may be charged with the death of the defendant—18 Tex. 34. It is not necessary to prove that the defendant was actually engaged in gambling, but it may be inferred from circumstances—40 N. H. 244. A partner in the game is a accomplice requiring confession to be corroborated—35 Ark. 43.

Premeditation must be proved by the prosecution—1 K. 10. 3. When the evidence is such as to show that the defendant was actually engaged in gambling, the defendant may be charged with the death of the defendant—18 Tex. 34. It is not necessary to prove that the defendant was actually engaged in gambling, but it may be inferred from circumstances—40 N. H. 244. A partner in the game is a accomplice requiring confession to be corroborated—35 Ark. 43.

Corpus delicti. The prosecution must prove the corpus delicti beyond a reasonable doubt—42 N. Y. 1, 46 Barb. 65. There is no direct proof of death in the criminal agency of another—18 Tex. 34. It is not necessary to prove that the defendant was actually engaged in gambling, but it may be inferred from circumstances—40 N. H. 244. A partner in the game is a accomplice requiring confession to be corroborated—35 Ark. 43.

On a trial for murder, photographs of a dead person may be introduced as evidence in showing the body of the murdered man—48 Ind. 100, no. of the clothing, equipment, etc.

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Incest The admissions of defendant are sufficient proof of relationship; 11 Am. S. 1 Parker 11 34 Relationship may be proved reputation; 14 Mo. 34 So it may be proved by a sworn declaration; 41 Cal. 34 It seems more easily proven via a trial testimony before a jury than otherwise; 10 Cal. 36 N.Y. 305 If a man day trading at the present time can show he sexual intercourse at a subsequent time as laid in. Something more must shown than an attempt to contract an incestuous marriage; 14 Cal. 36 2nd 37 38.

[illegible]

Evidence of prior conviction. The averment of a prior conviction of the party with the record 2 Cr. 4, sec. 13, 34, 35 N. Y. is substantially proof of identity of the party on trial with the one who formerly was convicted 2 Cr. 6, 11 Serg. & R. 4, 41 M 146. It seems that in stating the conviction set out the jury as part of the evidence that 2 Cr. 4, 34, 35 N. Y. 32, 30 Tex. 4.

[illegible]

When an animal stolen is recovered by a rancher the owner
in the morning I heard of a man who was a cowboy
on a ranch in Texas. He had a horse
and a cow. I rode up to the ranch and
found a lot of riders support a charge for stealing
the cow, or proof of a plowshare on a charge of it.

FEB. COMM. - 62.

Ownership.—When ownership is in issue, it may be proved as laid—17 Gratt. 583; id. 585; see 4 Ind. 469; 1 Rich. 29. A variance in the name of the owner is immaterial, 48 Ala. 165, but see 1 Bush, 11. It is a question for the jury, 23. Where property was alleged to be stolen from a corporation, it is sufficient to prove that it is a corporation *de facto*, 242, 28 Ind. 321.

The fact of ownership may be proved by others than the owner, 4 Yerg. 145. A written receipt for the purchase-money is evidence to show title—40 Ala. 372. The testimony of a witness is sufficient evidence that the property is in him—194 Mass. 104. Goods may be proved to be the absolute or special property of the owner who is charged to be the owner—19 Me. 225. So, if he has been agent or bailee, the defendant may be convicted—49 Ala. 543. So, proof of rightful possession will sustain a charge of ownership—1 Ga. 563; so, as to the possession of a horse, but, where property had never been in the possession of the owner, it is a fatal variance—35 Tex. 15. Proof that property was in the possession of the owner will support an allegation of ownership—21 Me. 14, 1 Park. 63 Me. 124.

An indictment alleging property in a single person is not supported by evidence of property in several as partners—1 Mass. 226, 14 N. H. 364, 10 Rich. 119; 3 Rich. N. S. 230, 41 Ala. 272, but see 5 Allen 517, and so, where the property is alleged to be in the possession of one, and the proof is that it belonged only to one—35 Tex. 604. The fact that the money stolen was in the possession of a third party, is sufficient evidence of ownership—6 Pac. C. L. J. 423. Where a witness proved the ownership of the horse, and that it was taken from his possession, and another witness proved that the thief had sold the horse to a third party, it is sufficient evidence to support a conviction—6 Pac. C. L. J. 507.

Value.—The genuineness of a bank-note must be proved by the person from whom stolen—41 Ala. 329, 8 Gray, 327. Evidence that defendant passed it as genuine is sufficient evidence of the contents of the bill is admissible—19 J. & W. 171. A witness may refresh his recollection of the value of the property

The prosecution may prove that she had a good character for chastity, was correct and modest in deportment, and that up to the time of the occurrence with the defendant she was considered virtuous. 32 Iowa, 23. Where nothing appears to the contrary, defendant will be deemed to have been of full age, so far as may affect his promise—36 N. Y., 203.

1103. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein. [In effect April 9th, 1880.]

Treason. After an overt act has been proved in the county where the indictment is found, evidence may be given of overt acts in another county. 1 Dall. 31. The felonious act for which defendant is held on another date may not witness or evidence. 10 D. 1, 348. Where two persons are separately indicted for the same act, two witnesses for the other. Wall Jr. 10. The language of the indictment is his intent or design to do this or that. 1 Dall. 35, see 11, 39; 10 D. 1, 348. Proof that a defendant is in possession of the ingredients defendant, a fourth only to grant passes, but competent evidence that he held a commission for the same. 1 Dall. 35. That two witnesses are required to prove treason. Refer to the proof of the transaction to be proved before the grand jury or the preliminary investigations. 2 Wall Jr. 138, 4 Branch, 369, 1 Burr. Trl. 36, 4 Phila. 336; but see 2 Whart. St. Trl. 490, see Fed. Const. art. 1, § 3, subd. 1.

Treason. See Const. Prov. and note, ante, p. 12.

1104. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved, but other overt acts not alleged may be given in evidence. [In effect April 9th, 1880.]

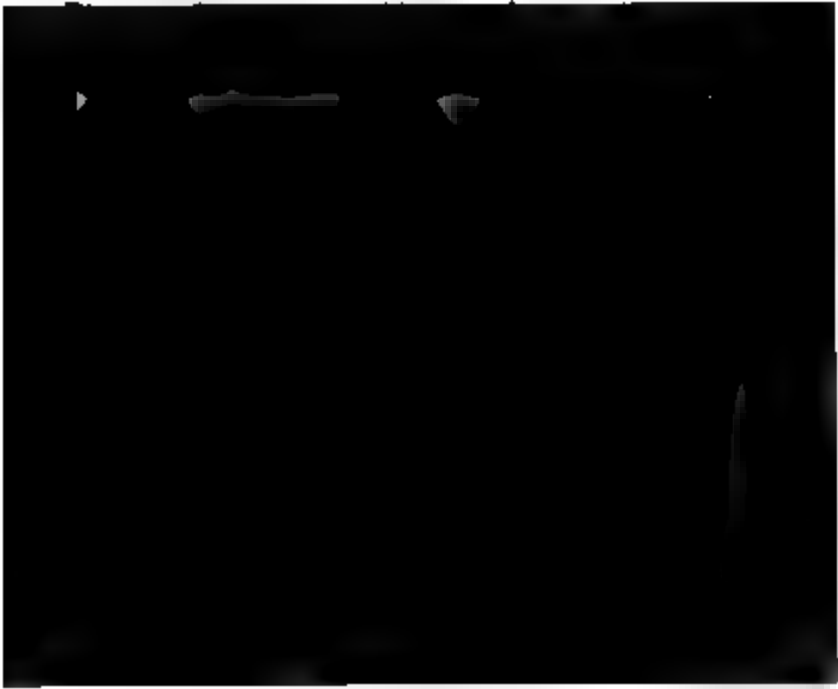
Conspiracy. The fact of conspiracy may be inferred from facts and circumstances—3 Bull. 581; 14 Blatchf. 381, 5 McLean, 513, 55 N. Y., 33; 43 M. 1, 1, and one witness will suffice to prove co-operation of any individual conspirator—10 Lick 41, see 3 Mass. 72. The conspiracy being proved, the jury are to give the same weight to the declarations of a co-conspirator, not on trial, as if he were on trial—49 Cal. 100.

1105. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed

only amounts to manslaughter, or that the defendant justifiable or excusable.

Burden of proof.—The law presumes an unlawful intent *prima facie* and the defense must show justification or other excuse—5 Cal. 252. A person is presumed to intend the ordinary consequences of his act and the burden is on him to rebut the presumption—1 Parker (252, see 1 Kan. 340. When the matter of defense is wholly disconnected from the body of the crime charged, the burden of proof is on the defendant—33 Ind. 270. So, where the subject-matter of an averment relates to the defendant personally, or is peculiarly within his knowledge—34 N. H. 422. So, where a conspiracy is proved, one of the conspirators was in a situation in which he might give aid to the perpetrator of the homicide, the burden is on him to rebut the presumption—9 Cal. 436. Where homicide is proved, it is on the defendant to show justification, excuse, or circumstances in mitigation—17 Cal. 287, subject to the qualification that the best evidence is to be given to the prisoner—15 Cal. 478. Where a wound is inflicted with a deadly weapon, on slight provocation, the burden of proof is on the defendant to show the want of deliberation and premeditation—2 Gratt. 594; see 8 Humph. 671; 2 Id. 432.

1106. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this State, proof of that fact, accompanied with proof of cohabitation thereafter in this State, is sufficient to sustain the charge.



bank or company by the charter or act of incorporation, and it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Forgery and counterfeiting. Each court takes notice of the statutes of its particular jurisdiction, and each jury takes notice of them in its own case. *1 Ind. 218, 41, 14 Ohio St. 230, 5 Sm. ed. 43.* It is competent to prove by reputation the existence and incorporation of a banking company. *4 Cal. 60, 8 Ind. 302, 211 120, 80 Cal. W. 302, 20 Wend. 30, 20 Ind. 41, Parker Cr. R. 46, 150 Ind. 27, 131, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.*

§ 1108 Upon a trial for procuring or attempting to procure an abortion, or a drug or assisting therein, or for inducing, enticing or taking away an unmarried female from her previous chaste character, under the age of twenty-five years, for the purpose of prostitution or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed unless she is corroborated by other evidence.

Abortion.—The woman on whom the abortion has been performed is a competent witness against the defendant. *10 Cal. 43, 11 Cal. 80, 12 Cal. 101, 13 Cal. 102, 14 Cal. 103, 15 Cal. 104, 16 Cal. 105, 17 Cal. 106, 18 Cal. 107, 19 Cal. 108, 20 Cal. 109, 21 Cal. 110, 22 Cal. 111, 23 Cal. 112, 24 Cal. 113, 25 Cal. 114, 26 Cal. 115, 27 Cal. 116, 28 Cal. 117, 29 Cal. 118, 30 Cal. 119, 31 Cal. 120, 32 Cal. 121, 33 Cal. 122, 34 Cal. 123, 35 Cal. 124, 36 Cal. 125, 37 Cal. 126, 38 Cal. 127, 39 Cal. 128, 40 Cal. 129, 41 Cal. 130, 42 Cal. 131, 43 Cal. 132, 44 Cal. 133, 45 Cal. 134, 46 Cal. 135, 47 Cal. 136, 48 Cal. 137, 49 Cal. 138, 50 Cal. 139, 51 Cal. 140, 52 Cal. 141, 53 Cal. 142, 54 Cal. 143, 55 Cal. 144, 56 Cal. 145, 57 Cal. 146, 58 Cal. 147, 59 Cal. 148, 60 Cal. 149, 61 Cal. 150, 62 Cal. 151, 63 Cal. 152, 64 Cal. 153, 65 Cal. 154, 66 Cal. 155, 67 Cal. 156, 68 Cal. 157, 69 Cal. 158, 70 Cal. 159, 71 Cal. 160, 72 Cal. 161, 73 Cal. 162, 74 Cal. 163, 75 Cal. 164, 76 Cal. 165, 77 Cal. 166, 78 Cal. 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of pregnancy, but all circumstances tending to show it - 39 Cal. 22. Although the testimony of a witness was improperly admitted, yet it was not objected to by the prosecution might prove that defendant was not a right mind when she made the declaration - 124 Cal. 344. Parker Cr. R. 36. Evidence of procuring an abortion on another - the prosecutrix is inadmissible - 6 La. 462; 63 Barb. 634.

1109. Upon a trial for the violation of any of the provisions of chapter nine, title nine, part one of this Code, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or of any pretended ticket or share, of any pretended lottery, or of any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager, but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket is evidence that such share or interest was signed and issued according to the purport thereof.

1110. Upon a trial for luring, with an intent to defraud or defraud another designedly, by any false pretense, or obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, the defendant shall not be convicted if the false pretense was expressed in language unaccompanied by a false token or written instrument, or some note or memorandum thereon, or in writing subscribed by or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section shall not apply to prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

False pretenses. The burden of proof is on the prosecution to show the pretenses were false, unless the fact lies peculiarly within the knowledge of the accused - 41 Mass. 570. It is competent for the plaintiff to testify that he relied on the representations of the defendant - 5 Parker Cr. R. 142. Although when all of the pretenses charged are a substantive part of the offense, all must be proved to a reasonable doubt.

Otherwise where one or more are sufficient *per se* to constitute a—34 N. Y. 351, 11 Wend. 557, 9 N. H. 31, see 5 Thomp. & C. Infringe between the indictment and the proof, in the name of a defrauded is fatal. 33 Tex. 161, 7 Allen 545. So a variable amount which a party represents himself to be worth is a variable—51 Cal. 54, 30 Am. 9, 10 Cal. 31, see 14 Wend. 87. Once in the description of the property of a fund by the false is material. 20 Wis. 21, 4 Met. 43, 15 Gray, 199. Evidence the pretenses were made to a clerk or agent of the owner is—7 Met. 401, and see Fanch. & C. 416.

testimony of a vendor is admissible to show to whom he gave Allen, 548, see 13 Mass. 45. Therefore that at the time of pretense the defendant was involved in an assault, show is intended. Allen, 548, and the conduct in acts of this degree competent evidence. Gray, 13, 5 Park. 101 R. 14, 44.

On a full realization, the pretense is great, so that at the right of defendant to show his ability, it must be to the jury when the signature was made. Would the rational and influence of the false pretense be a ground for unless some material fact is shown to the face of the fact shows that the pretense was immaterial. IN 133 In the rationality, the jury may take into consideration the capacity of the party defrauded to detect them. 141 148.

A conviction cannot be had on the testimony of a police officer, unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense, and the corroboration is insufficient, if it merely shows the commission of the offense or the circumstances thereof.

negative evidence. A conviction cannot be had upon the un-
aided testimony of an accomplice—53 Cal 407, 39 Id 403, 1d
404, 1d 418, 5 Iowa 462, 11 Id 347, 34 Tex 133, 31 Iowa,
1; Bond 341, 1d 113, 5 Gray 89, 3 McLean 41, 7 Wm. 1;
3 Parker Cr R 19, 1d 301, 55 Barb 466, 56 Id 26, 21 N. Y.
41, 303, 26 11 341, 1 Com 2, 4 1 1 128, 7 Id 36, see 4
C. R. 612, 29 Conn 463, 29 La. An 14, 15 Id 522, 41 Ga 197,
30 Id 689, 3 Ind 30, 15 Ark 1, 15 Va 318, 41 Va St.
C. a woman upon whom an attempt of abortion had been
made. When the accomplice testifies he cannot shield
himself from disclosure of his connection with the offense—18
Id 341, but he is not required to disclose a conspiracy of which
he is a member. He is not to be disclosed as a party to the
offense of an accomplice—Bar 1. The jury is not to judge
credibility of the accomplice's evidence on the basis of it,
but the testimony of the accomplice is to be taken into
consideration in the case of the offense—50 Cal 484, 50 Id 481, 16 Id.
422; 31 1 341, 1 Wm. 31, 1 Id 348. It is not to be
used to establish the precise facts of the offense—40
Cal 409. It may be sought to discredit the accomplice
if there be any which of itself tends to convict it a sum.
Cal 616, 616 30 Id 26, but it is otherwise with a feigned
Id—30 Id 26.

five is not an accomplice. 36 Iowa, 313. Whether a person is a question for the jury. 19 Iowa, 109, 36 Id. 343. A law, to be of any avail, should be to some matter material

to the issue—54 Barb. 306. Any evidence tending to show intent on the part of defendant, would be sufficient corroborate her testimony—39 Cal 403. Admissions made by the prisoner tend strongly to connect him with the larceny, are sufficient corroboration of the testimony of an accomplice—49 Cal 550. If of the prisoner to the officer that the accomplice had been with the offense, is a sufficient corroboration of the testimony of the accomplice—12 Allen, 183, see 110 Mass 104.

Statements of an accomplice, not given in the presence of the defendant, nor during the pendency of the enterprise and in furtherance of its object, are not competent—20 Proof that stolen property was found next day after the person accused is sufficient corroborating evidence. If the prosecution prove the larceny by an accomplice, that next morning the prisoner received the horse from who stole it, and immediately removed it to another place giving an assumed name, is sufficient corroboration. Where an accomplice, on cross-examination, testifies that the magistrate told him he should not be prosecuted if he would confess, the testimony of the magistrate is admissible to corroborate—22 Pick. 397. The testimony of an accomplice corroborated by that of another accomplice—4 Greene, 6.

1112. Repealed. [In effect March 12th, 1880.]

1113. The court may direct the jury to be sworn where it appears that it has not jurisdiction of the case or that the facts charged do not constitute an offense punishable by law. [In effect April 9th, 1880.]

1114. If the jury be discharged because they find no jurisdiction of the offense charged, and it appears that it was committed out of the jurisdiction of this court, the defendant must be discharged. [In effect April 9th, 1880.]

1115. If the offense was committed within the exclusive jurisdiction of another county of this State, the court must direct the defendant to be committed for trial in that county as it deems reasonable, to await a warrant from that county for his arrest, or if the offense is a misdemeanor only, it may admit him to bail in an undertaking with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to trial in that county for his arrest from the proper county; and, if arrested thereon, will attend at the office of the clerk of the court in the county where the trial was had, at a certain day particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail be forfeited such sum as the court may fix, to be made good by the defendant.

undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission is chargeable to that county. [In effect April 9th, 1880.]

Where a party is guilty of receiving stolen property brought from another county, with guilty knowledge of the theft, he cannot be prosecuted for larceny in the county where he resides—40 Cal. 691, and 10 Id. 648.

1116. If the defendant is not arrested on a warrant from the proper county, as provided in section one thousand and one hundred and fifteen, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

1117. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated, or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment or information can be framed, upon which the defendant can be legally convicted, in which case it may direct the district attorney to file a new information, or (if the defendant has not been committed by a magistrate) direct that the case be submitted to the same or another grand jury, and the same proceedings must be had thereon as are prescribed in section nine hundred and ninety-eight; *provided*, that after such order or submission the defendant may be examined before a magistrate, and discharged or committed by him as in other cases. [In effect April 9th, 1880.]

1118. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a con-

viction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice.

See 38 Cal. 473.

1119. When, in the opinion of the court, it is that the jury should view the place in which the crime is charged to have been committed, or in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate to the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

View of premises. No person can be allowed to talk to the jury during their viewing the place where the crime was committed. Cal. 61. Visiting the scene of the *res gestæ* by a part of the jury, if the case is committed to them is ground for a new trial—14 M. 16 Id. 19, 3 Parker Cr. R. 25; otherwise if it be merely casually—268, 20 Kan. 311.

1120. If a juror has any personal knowledge relating to a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the deliberation of the jury, a juror declare a fact which contradicts the evidence in the cause, as of his own knowledge, the juror must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and be examined in the presence of the parties.

1121. The jurors sworn to try an action may, at any time before the submission of the cause to the jury, at the discretion of the court, be permitted to separate, and be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or to communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof. [In effect April 9th, 1930.]

An order of court made by consent of defendant, authorizing the sheriff to receive from the jury a sealed verdict, and on its return to allow the jury to separate until the session of the court on the next day.

ing morning, is not an error of which defendant can complain—41
357.

1122. The jury must also, at each adjournment of court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

1123. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begun anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

1124. The court must decide all questions of law which arise in the course of a trial.

Court to decide questions of law, as, the admissibility of evidence, or a severance of defendants on the trial.—1 Ala. 137, 2 Ashm. 311, Ala. 74, 41 F. 49, 7 Gratt. 68; 25 Md. 938, 10 Ind. 453, 39 Me. 78, 15 673, 7 R. L. 1, 13 Ohio St. 440, 7 Rich. 412, 33 F. 316, and where the material charge in the indictment is not supported in law to direct acquittal—27 La. An. 393, see 10 Kan. 475; 10 Allen. 189, 68 Mo. 308. *contra*. 75 N. C. 275, 57 Ga. 503, 50 Ala. 154. See 6 Cal. 637, and see 1127, and note.

1125. On a trial for libel, the jury has the right to determine the law and the fact. [In effect April 9th, 1880.]

1126. On a trial for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to recede as law what is laid down as such by the court. [In effect April 9th, 1880.]

Questions of law.—The jury cannot decide on the law, nor can the court submit such questions to them.—43 Cal. 56, so pertinence of evidence cannot be submitted to the jury—49 Cal. 56, nor the applicability of evidence to the issues—49 Cal. 56. In the following cases the jury is bound by the instructions of the court in both civil and criminal cases—see 53 Me. 328; 11 548; 14 Ala. 157, 15 N. H. 59, 185; 7 Mo. 407; 42 Ga. 432. In United States Courts—1

capital cases—14 Rich. 87. In libel—see Const. Cal. art. I, § 13 & § 1102, and note.

Province of jury.—They must decide without reference to private knowledge—8 Parker Cr. R. 235. They are to decide as to credibility of witnesses—21 Pick. 897; see 58 Me. 257. The jury are exclusive judges of the facts—30 Cal. 214; 11 Gray, 321, 14 id. 404; Allen, 571, see 50 Pa. St. 315. It is for the jury to determine when evidence introduced upon a given point amounts to proof of the fact in issue—30 Cal. 151. It is the province of the jury, unaided by the court, to say whether a fact is proved—32 Cal. 213. On the trial of a murder the jury have a right to weigh with the other proofs the apparent absence of motive on the part of defendant—17 Cal. 27. A judge cannot express his opinion on the weight of evidence; he may state the evidence and declare the law thereon, or he may state that there is no evidence as to a certain fact—27 Cal. 507.

1127. In charging the jury, the court must state to them all matters of law necessary for their information. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse and sign its decision. If part be given and part refused, the court must distinguish, showing the indorsement what part of the charge was given and what part refused.

Charge of court. The court may, by express consent of the defendant, present and read to the jury any charge or charges of law.

562. An instruction upon a trial for an assault with intent to kill, to the effect that evidence of drunkenness on the part of defendant is nearly admissible under the law, should be received as a caution is not erroneous—5 Cal 58, see 43 Id 744. An instruction that if the jury "believe any witness had sworn upon the stand fully, accurately, and falsely, in respect to any matter material to the issue, they should disregard his testimony altogether" properly refused—55 Cal 154.

A failure to instruct the jury that statements made to the police are not admissible to prove their truth, is not erroneous if requested to be given—53 Cal 613, 32 Id 98, 43 Id 278, 61 Id 100. Contradictory instructions are not to be tolerated—49 Cal 557. In the absence of an instruction, all the instructions on the point must be considered—55 Cal 201. An erroneous instruction cured by another instruction whereby a jury was prevented from being misled by the error—55 Cal 202. As to oral instructions—see § 1093, subd 6, note; § 1175.

1128. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have agreed, or when ordered by the court.

1129. When a defendant who has given bad appearance for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he may be committed and held in custody accordingly.

1130. If the district attorney fails to attend at trial, the court must appoint some attorney-at-law to perform the duties of the district attorney on such trial.

1131. Upon a trial for larceny or embezzlement of money, bank-notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, sustained, if the offender be proved to have embezzled or stolen any money, bank-notes, certificates of stock, or valuable security, although the particular species of

her money, or the number, denomination, or kind of bank-notes, certificates of stock, or valuable security, be proved; and upon a trial for embezzlement, if the offender be proved to have embezzled any piece of coin or other money, any bank-note, certificate of stock, or valuable security, although such piece of coin or other money, or such bank-note, certificate of stock, or valuable security, may have been delivered to him in order that a part of the value thereof should be returned to the owner by delivering the same, and such part shall have been returned accordingly. [In effect April 9th, 1880.]

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CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

- | 1135. Room, etc., for jury after retirement.
- | 1136. Accommodations for jury when kept together.
- | 1137. What papers the jury may take with them.
- | 1138. After retirement, may return into court for information.
- | 1139. If juror after retirement become sick, etc.
- | 1140. Not to be discharged unless there is no probability they can agree.
- | 1141. When discharged without verdict, cause to be again tried.
- | 1142. Court may adjourn during absence, but deemed open.
- | 1143. Final adjournment discharges jury. (Repealed.)

1135. A room must be provided by the supervisors of each county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, light and stationery. If the supervisors neglect, the court may order the sheriff to do so, and the expenses incurred by him to be paid by the supervisors.



with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

What jury may take.—The jury are entitled to take out with them such papers and instruments of evidence as have been admitted in the case—6 Ill 365; but if others are taken, and which lead to a conviction, it will be cause for setting aside the verdict—13 Allen 184, 16 Ark 568, 1 Idaho 14, 5 Miss 415, 38 Md 527, 4 Wash C C 148, 3 Johns 252, 2 Ventres 273, 20 Kans 643, 10 Rich 212, 5 Ben 238, 34 Leg Int 304. It is error, in a criminal case, to permit the jury, on retiring, to take with them instructions refused by the court, but if such refused instructions are asked by and favorable to, the defendant the fact that the jury takes them cannot prejudice him—5 Pac C L J 538.

Return for information. After retiring, the jury may return into court for information—53 Cal 575. This section does not authorize an oral charge—54 Cal 575, see *ante*, § 1093, subd. 6 and note. It is a fatal error for a jury to return into court and receive instructions in the absence of defendant's attorney, or without proof of notice to him of their return—37 Cal 276.

1138. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the district attorney and the defendant or his counsel, or after they have been called. [Approved March 30th, in effect July 1st, 1874.]

1139 If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Discharge of jury.—A discharge of a jury from sickness or any other accident is not a bar to further prosecution for the same offense—41 Cal 431, 432. The discretion of the court to discharge the jury must be exercised in some form of evidence, and the jury must, on the point, be expressed in some form on the record—45 Cal 327, see *ante*, § 101, subd. 4 and note.

1140 Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties, entered upon the minutes, or unless at the expiration of such

time as the court may deem proper, it satisfactory appears that there is no reasonable probability that the jury can agree.

Discharge by consent.—If the jury is discharged with the consent of the defendant, because unable to agree, it is not an acquittal of the defendant—41 Cal. 214; and the prisoner is not entitled to discharge *habeas corpus* in such a case—41 Cal. 219. In case of failure of the jury to agree, the proper course is to call them into court and have them announce their inability to agree, and then discharge them—43 Cal. The jury may be discharged without rendering a verdict, on consent of both parties—38 Cal. 475. See *ante*, § 1017, subd. 4, note.

1141. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial, or after the cause is submitted to them, the cause may be again tried. [In effect April 9th, 1880.]

See 41 Cal. 215; and see *post*, § 1181.

1142. While the jury are absent, the court may adjourn from time to time, as to other business, but it is nevertheless to be open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

Adjournment. A district judge may adjourn a general term of court, and may adjourn a term in another county, and that



CHAPTER IV.

THE VERDICT.

- § 1147. Return of jury.
- § 1148. Appearance of defendant.
- § 1149. Manner of taking verdict.
- § 1150. Verdict may be general or special.
- § 1151. General verdict.
- § 1152. Special verdict.
- § 1153. Special verdict, how rendered.
- § 1154. Form of special verdict.
- § 1155. Judgment on special verdict.
- § 1156. When special verdict defective, new trial to be ordered.
- § 1157. Jury to find degree of crime.
- § 1158. Jury may find upon charge of previous conviction.
- § 1159. Jury may convict of lesser offense, or of attempt.
- § 1160. Verdict as to some defendants, new trial as to others.
- § 1161. Court may direct a reconsideration of the verdict.
- § 1162. When judgment may be given on informal verdict.
- § 1163. Polling the jury.
- § 1164. Recording the verdict.
- § 1165. Defendant, when to be discharged.
- § 1166. Proceedings upon conviction or special verdict.
- § 1167. Proceedings on acquittal on ground of insanity.

1147. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried at the same or another term.

Return of jurors into court.—Irregularity in not first calling over their names, does not prejudice the defendant, if the jurors are all present and had agreed. 44 Cal. 542.

1148. If charged with a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence. [In effect April 9th, 1880.]

Appearance.—At the time of the rendition of the verdict on charge of felony, the defendant must be present in court—42 Cal. 551d. 290; 62 Ill. 46; 19 Gratt. 656; 18 Pa. St. 193; 83 Ill. 386; 1 Need. 55 Ga. 521; 47 Miss. 716; 52 Ill. 391; 6 Pa. St. 385; 69 Ill. 296; but where, as to the necessity of his presence in a case of lunacy, see 31 Cal. 5 Blatch. 194; see 29 Iowa, 286; 19 N. Y. 549; 25 Pa. St. 271; 16 Vt. 17 Wis. 675; 6 Ired. 164; 14 Mich. 300. That the prisoner was absent must be proved by defendant—31 Cal. 677; 4 Ill. 224. If defendant not present when verdict is rendered, but enters immediately after and before the jury is discharged, it will not be held a vital error unless his rights are prejudiced—33 Cal. 99.

1149. When the jury appear, they must be asked by the court, or clerk, whether they have agreed upon a verdict, and if the foreman answers in the affirmative they must, on being required, declare the same.

1150. The jury may render a general verdict, or, if they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict. [In effect April 9th, 1880.]

Verdict.—Upon the request of either party, the court should instruct the jury that they have the discretion to render either a general or special verdict—27 Cal. 407. The only verdict in a criminal case that a jury can render under the laws of Louisiana is a general verdict—17 La. An. 71.

1151. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and proof, the verdict must be "not guilty by reason of variance between indictment and proof." [Approved March 30th, in effect July 1st, 1874.]

General verdict.—The verdict "guilty" is assumed to refer to the indictment to which it is a response—39 Ill. 26. When a jury returns a general verdict upon an indictment containing several counts, it is presumed that they found the prisoner guilty on all—34 Conn. 29 Ill. 164; 1 W. Va. 357; or that the finding was on the good count where the other count was bad—3 Cal. 28; 3 McLean, 465; 46 Ill. 44; 55 Ala. 210; 34 Ill. 297; 8 B. Mon. 36; 8 Humph. 118; 3 Heisk. 31 Mass. 214; 17 Pick. 80; 7 Ired. 275; 3 Rich. 251; 14 Swedenb. & B.

A general verdict will be presumed to have been given on the count to which the testimony applied—7 Jones, (N. C.) 24; see 62 N. C. 364. The verdict need not state on which count it was found. 3 Miss. 13, 36 N. Y. 77. It is good if any one of the counts is good. 3 McLean, 409, 3 Caff. 28, 6 M. & W. 17, 1 Pa. 80, 14 M. & W. 214, 45 Barb. 34, 5 Pa. St. 60, 7 Fred. 2, 3 B. 1 50, 50 Ala. 210, 1 Simons & M. 30, 34 Ill. 2, 8 B. Mon. 30, 8 Hamp. 118, 3 Hark. 115, 21 Mo. 289, 35 Me. 74, 23 Pa. St. 35, 1 Sue. d. 37, 4 A. & P. 13, 13 Gray, 26, 1 Ohio St. 12, 16 Ga. 4, 3 M. Leach, 405, 7 Fred. 275, 41 Ala. 64, 6 B. Mon. 30, 1 Parker Cr. R. 116, 29 Mo. 54, 8 Iowa, 477, 48 Me. 218, 42 N. H. 405. A party indicted as principal cannot be convicted on evidence showing that he was accessory before the fact. 20 Cal. 175.

A verdict of guilty on one count saying nothing as to other counts, is equivalent to a verdict of not guilty as to the other counts—Denny, 34; 5 Allen, 514, 7 Blackf. 186, 6 Ala. 206, 9 Leigh, 617, 14 Ind. 300, 56 Ill. 101, 64 Id. 408, 65 Id. 445, 5 Ill. 188, 4. Me. 304, 68 Mo. 120, 63 Me. 30, 14 N. Y. 100, 22 Pa. St. 381, 5. Id. 424, 8 Simons & M. 302, 2 Va. 205, 30 Wis. 408. A verdict does not cure the defects of an indictment. 9 Cal. 30. It is conclusive as to the venue having been proved, when it reads, "guilty as charged in the indictment."—15 Cal. 428.

A verdict acquitting defendant of forging and uttering an indorsement is not an estoppel upon any matter *aliunde*. 28 Cal. 507. Finding the guilty who is not named in the indictment is an acquittal of the one named. 1 Cal. 401, but where the true name was discovered and set to a trial, it is not a fatal variance—34 Cal. 189. The procedure in rendering a general verdict must be in open court, and in the defendant's presence—1 Ark. 476, 41 Miss. 716, 52 Id. 302, 125 Mass. 203; 2 N. C. 55.

A written general verdict is irregular, and the court may require it to be made orally—125 Mass. 203, 56 Miss. 154, Id. 758, 16 N. H. 323, 1 Ind. 46, but see 19 Oh. 9 St. 572. A general verdict implies that all facts well pleaded are found in manner and form as charged. 4 Barb. 32, 30 Ill. 18, 45 Ind. 506, see 17 Ohio St. 204, and the words "as charged in the indictment" are mere surplusage. 10 Iowa, 436. Any addition to a general verdict may be regarded as surplusage—34 Cal. 20, 37 Id. 40, see 2 Va. 408, 471, 28 Ill. 600, 4 Yates, 441. So, a recommendation to mercy is no part of the verdict, and the court may render it to be recorded without such recommendation—17 Cal. 18; 3 La. An. 27, 51 Ga. 324.

Sealed verdict.—The court may with the defendant's consent, permit the jury to separate and bring in a sealed verdict—1 Ala. 367, 2 Blackf. 114, 30 Ill. 276, 3. Ind. 492, 116 Mass. 37, 63 Me. 30, 6 McLean, 30, 9 Pa. 130. The defendant is entitled to have the jury present at its rendition. 6 McLean, 30, 32 Ill. 405, 11 Ind. 386, 32 Mich. 63.

1152. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Special verdict.—If there is a plea of "not guilty," and a plea of former conviction the defendant is entitled to a verdict on each plea. 31 Cal. 279. If the verdict is "guilty" alone, no judgment of conviction can follow—31 Cal. 279.

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1153. The special verdict must be returned by the jury, or in their presence entered upon the record of the court, read to the jury, and agreed to before they are discharged.

Verdict, how rendered. If the jury is discharged and a verdict is entered, the prisoner ought to be discharged. *See ante*, § 151; and *post*, § 181, and notes. If, while deliberating, the judge, without calling the jury into the court, enters a verdict, it is equivalent to an acquittal. 43 Cal. 329. *See note.*

1154. The special verdict need not be in any particular form, but is sufficient if it presents the facts found by the jury.

Form of verdict. The court should direct the jury to return a verdict in proper form—53 Cal. 627. "We, the jurors, find that the defendant is guilty of murder in the second degree," is sufficient—44 Cal. 242. "We, the jury in this case find that the defendant is guilty of manslaughter," is sufficient—49 Cal. 47; 43 Cal. 329. A formal verdict is sufficient, if it can be clearly understood. A general verdict of guilty or not guilty—49 Cal. 155. The verdict must specify the offense, or some offense included within the charge, and the judgment of conviction will be reversed—53 Cal. 627. The court may amend a verdict in form so as to meet the requirements of the law at any time while the jury is before it, and under 6 Pac. C. L. J. 322. In a prosecution for embezzlement, "We, the jury, find defendant guilty, as indicted, to the intent that he should defraud," though not artistically worded, is sufficient in substance—J. 868. Where there are several counts, the accurate practice is to specify on each count—78 Ill. 336.

1155. The court must give judgment upon the verdict as follows:

1. If the plea is not guilty, and the facts found by the jury establish the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given for conviction. But if otherwise, judgment of acquittal must be given.

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment for conviction or acquittal, as the facts prove or fail to prove a former conviction or acquittal.

Judgment.—A judgment of conviction should be certain and subject to no future decision or contingency—it should state that the plea of the prisoner preceded the swearing of the jury—1 Ala. 455. Dates may be given—1 Ala. 612. The day of the execution of the sentence of death should be inserted in the judgment, but is no warrant for the execution—Cal. 189; 45 Id. 137. A judgment may be erroneous in part as to the residue—39 Conn. 82, 1 Cowen, 104. A conviction

defendants may be convicted of different degrees—6 Bush, 303; 31 N. Y. 229; 3 Cush. 384; 101 Mass. 14; 32 Mass. 403.

1158. Whenever the fact of a previous conviction of another offense is charged in an indictment or information, the jury, if they find a verdict of guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction. The verdict of the jury upon a charge of previous conviction may be "We find the charge of previous conviction true," or, "We find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction. In effect April 9th, 1880.]

Previous conviction.—The jury may find upon the charge of a previous conviction: 4 Cal. 378; 5 Id. 278; 49 Id. 395. The identity of the party on trial with the party in proceedings resulting in his prior conviction is a question of fact for the jury—47 Md. 497, 14 Serg. & R. 26 Ga. 614. See ante, §§ 606-607.

1159. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense. In effect April 9th, 1880.]

Lesser offense. A jury may convict of a lesser offense included in the charge. 4 Cal. 378; 5 Id. 278; 49 Id. 395. See ante, §§ 606-607.

cordingly, and the case as to the others may be tried by another jury. [In effect April 9th, 1880.]

Verdict as to codefendant.—Convictions of codefendants are several. 2 Ired. 402, 3 Miss. 406, 407, 41, 45. A conviction of a joint offense can only be on evidence of joint guilt. see 14 Ohio, 388, 14 Gray, 57. One may be convicted and the other acquitted. 6 Serg. & R. 577, 12 Miss. 311, 11 Ab. 17, 18, 8 Blackf. 209, 31 Tex. 230, 10 Mo. 441, 2 Pa. St. 42, 11 B. Mo. 3. In cases of conspiracy and plot. see 3 McLeay, 514, 1 H. L. 30, 2 La. An. 68, 2 Ast. 93, 5 Pa. St. 13. On a joint indictment against two, proof that the offense was committed severally will not sustain a conviction of either or both. 44 A. 2. 414.

1161. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it. If the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially, and to leave the judgment to the court.

Amendment of verdict. When the verdict is not responsive to the offer of a charge, it will be set aside, and a verdict responsive will be directed. 14 N. C. 44. But if the jury are discharged a verdict may be amended until it is after their discharge. 1 Cal. 40, 1 O. 3, 40, see 10 Gray, 1, 2 Gratt. 599, 2 Ga. 21, 5 F. J. Mar. 63, and any informality, uncertainty or impropriety may be amended before they separate. 12 Cal. 46, 1 N. Y. 54, 25 Ga. 599, 2 Gratt. 558, 2 Ashm. 91, 38 Miss. 295. See ante § 1151, note.

1162. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment is given against him on a special verdict.

1163. When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either

party, in which case they must be several whether it is their verdict, and if any one a the negative, the jury must be sent out for its liberation.

Polling jury.—Either party may require that the jury be polled. 11 Ind. 569; 8 Ired. 330; 52 Ga. 478; 11 Ohio, 449; 1 Wend. 91; 6 Wis. 205; so, of the court on its own motion. If any juror dissents, the verdict is a nullity, and must again retire for deliberation—Breece, 109; 1 Hall. 3; 6 J. J. Mar. 678, but not if the dissent be withdrawn—6 Te 121; and see 6 McLean, 86; 11 Ind. 569; 23 Mich. 63.

1164. When the verdict given is such as it may receive, the clerk must immediately record upon the minutes, read it to the jury, and inquire whether it is their verdict. If any juror dissents, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

Recording verdict. Unless it appears that defendant has been prejudiced in respect to a substantial right, the failure to record the verdict, read it to the jury, and ask if it is their verdict, is not fatal to the judgment—6 Pac. C. L. J. 966. A verdict does not become final until recorded in the minutes—6 Pac. C. L. J. 965, and cannot be pronounced on it—6. If the jury is discharged, the verdict is not binding on the court—6 Pac. C. L. J. 966.



1166. If a general verdict is rendered against the defendant, or a special verdict is given he must be remanded, if in custody, or if on bail, he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

See BAIL, *post.* § 1263.

1167 If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the State insane asylum. If the jury find the defendant sane, he shall be discharged. [Approved March 30th, in effect July 1st, 1874.]

CHAPTER V.

BILLS OF EXCEPTION.

- § 1170. In what cases.
- § 1171. When to be settled and signed.
- § 1172. Exceptions to decision of court by either party.
- § 1173. Exceptions to decision of the court by the defense.
- § 1174. Exceptions, how settled.
- § 1175. What bill of exceptions is to contain.
- § 1176. Written charges need not be excepted to.

1170. On the trial of an indictment or information exceptions may be taken by the defendant to a decision of the court—

1. In disallowing a challenge to the panel of the jury or to an individual juror for implied bias.
2. In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias.
3. In admitting or rejecting testimony, or in deciding any question of law not a matter of discretion, or

admitting evidence to be given without objection, and then strike it out on grounds which might readily have been made in the first instance, is not to be tolerated—43 Cal. 446. Proper questions are permitted to be answered, it must show facts given, or that they justify the defendant. No Black exception can not be taken to an answer which is responsive then put with a motion. M. 10, see 10 Mich. 173. The defendant's evidence is cured by its substance in a motion. 4 M. On a refusal of the court to admit evidence, it should be expected for a civil case, as we would testify, 1 Met. When a question goes to the fact of answered, no injury is done. 28. To the forms of questions asked, and to the regularity in their arguments, exceptions will not be taken. 1 Parker Cr. 404; id. 44. See ante, 1093, 1094, 1095, 1096, 1097, 1098, and notes.

When a party desires to have the exceptions to the trial settled in a bill of exceptions, the draft must be prepared by him and presented, upon not less than two days to the district attorney, to the settlement, within ten days after judgment has been rendered against him, unless further time is granted by the judge, or by a justice of the Supreme Court, or that period the draft must be delivered to the court for the judge. When received by the court, it must deliver it to the judge, or transmit it to the earliest period practicable. When settled, the bill must be signed by the judge and filed with the clerk of the court. [Approved February 18th, 1881.]

[illegible]

the certificate of the judge to a bill of exceptions—37 Cal. 24, and id. 72.

If the defendant should fail to prepare and tender a bill of exceptions within ten days, or such additional time as may be allowed, excuses therefor will be heard, and the bill may be signed—14 Cal. 38. A mandamus will issue, not to compel the signing of the bill absolutely, but to sign the same after it is duly settled—14 Cal. 32. Where it is not shown that there are reasonable grounds for the appeal taken, and it appears that it is intended merely for delay, and no application was made for time to prepare the statement immediately after the refusal of the court to act, mandamus must be denied—14 Cal. 433. A bill of exceptions not signed by the district judge will be disregarded on appeal—44 Cal. 327. The court will not inquire into the reason which induced the judge to sign the bill after the statutory period, but will presume they were sufficient—14 Cal. 511. See post § 1176, note.

1172. Exceptions may be taken by either party to the decision of a Court or Judge upon a matter of law.

1. In granting or refusing a motion to set aside a indictment or information.

2. In allowing or disallowing a demurrer to an indictment or information.

3. In granting or refusing a motion in arrest of judgment.

4. In granting or refusing a motion for a new trial.

5. In making, or refusing to make, an order affecting judgment affecting any substantial right of the parties. [Approved March 10, 1885.]

See post § 1176 and notes.

The judge here mentioned is the judge who sits at the trial.

1173. An exception to the ruling on a motion refusing a continuance must be presented on appeal by a bill of exceptions by embodying the affidavit in the bill, or in some mode clearly identifying it as having been read on the hearing of the motion—47 Cal. 108. See ante, p. 56 Cal. 72.

1174. Where a party desires to have the exceptions mentioned in the last two sections settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days to the adverse party, to the judge, for settlement, within ten days after the order or ruling complained of is made, and no further time is granted by the judge, or by a justice of the Supreme Court, or within that period the draft must be delivered to the clerk of the court for the judge. When received by the clerk, he must deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge, and filed with the clerk of the court. If the judge of the case refuses to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the facts; the application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by the chief justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who tried the cause. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in this section, apply to the Supreme Court to prove the same. [Approved March 30th, in effect January 1st, 1874.]

This section declared directory—34 Cal. 183. If the judge cannot settle the bill of exceptions or statement may be delivered to the clerk of the court or judge, who must note the date of their receipt thereon—14 Cal. 50. The judge here mentioned is the judge who heard and determined the motion for a new trial. In the construction of ambiguous statutes, such a construction should not be given as to deprive a party of the right to be heard on a bill which has been presented and allowed by the judge who heard and ruled upon the motion. Cal. 72.

1176. When written charges have been presented, given, or refused, or when the charges have been taken down by the reporter, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges of the report, with the endorsements showing the action of the court, form part of the record, and any error in the decision of the court hereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

Charges given or refused—This section refers to charges and instructions which either party may present, and ask to be given in accordance with § 1127 of this Code, and not to the charge of the court in its own motion—44 Cal 538. An alleged error in the charge to the jury will not be noticed unless the party excepts, and by bill of exceptions places the charge on the record—20 Pick 268, 14 Smedes & M. 31. A more general exception to the charge, without specifying any grounds of error or asking for a particular charge, is not well taken—Barb. 46.

The refusal to give an instruction is not a ground unless the judge is requested to give it—33 Me 584. Where a bill of exceptions is allowed, the facts embraced in it become part of the record, and a writ of error brings up the entire record, and error may be assigned in any part of it—5 A. A. 566. Where it does not disclose what the evidence was in relation to which the charge was given, it will be overruled if the instruction could have been correct in any supposable state of the evidence—5 R. 1 53.

Phonographic notes of evidence taken at the trial and transcribed to long hand, even if verified by affidavit, do not constitute a part of the record on appeal for any purpose—44 Cal 327, 43 Id. 177. They form no part of the bill of exceptions unless embodied therein, and referred to in the charge as to identify them—51 Cal 602. Before incorporating them in a bill of exceptions, all matter not necessary or proper to illustrate the points presented on appeal should be eliminated, and it then should be revised by the judge—42 Cal 538. The report transcribed into long-hand from the reporter's notes is only *prima facie* a correct statement of evidence and proceedings, while a bill of exceptions imports absolute verity—42 Cal 538; 28 Id. 218; 32 Id. 3; 34 Id. 309, 37 Id. 254, 40 Id. 286. See *ante*, § 1093, note.

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CHAPTER VI.

NEW TRIALS.

- § 1179. New trial defined.
- § 1180. Its effect.
- § 1181. In what cases it may be granted.
- § 1182. Application for, when made.

1179. A new trial is a re-examination of the facts by the same court, before another jury, after a verdict has been given.

New trial. A new trial is a re-examination after verdict, and law not of record—3 Ga. 316, but an error which is upon the record, and which can be noticed in arrest of judgment, ordinarily be ground for a new trial. 3 Conn. 289, as the omission of a letter from the prisoner's name on the bill found by the grand jury, 37. Where the name of a witness was indorsed on the indictment slightly variant from the real name, the omission was sufficient to maintain a motion for a new trial. 4 Pac. C. L. J.

Objections to drawing and impanelling of the jury come on motion for a new trial. They are deemed waived if not made at the time. 3 Cal. 230, 43 d. 148. A general excitement against the defendant at the time of the trial, in the community at large, is not a ground for a new trial—7 Watts & S. 422; but if such excitement pervades the jury-box, and works to the prejudice of the defendant, the verdict ought to be set aside—10 Cal. 1-5. It is no ground for a new trial on a challenge for actual bias one of the triers is, on the panel jury, for attendance in the case—43 Cal. 147, 148, 167. The motion may be made *ex officio*, and if desired, the grounds and rulings of the court may be embodied in a bill of exceptions, and can be reviewed by the Supreme Court in no other way—41 Cal. 651.

1180. The granting of a new trial places the parties in the same position as if no trial had been had. All testimony must be produced anew, and the former trial cannot be used or referred to either in evidence or argument, or be pleaded in bar of any conviction which might have been had under the indictment. [Approved March 30th, in effect July 1st, 1874.]

1181. When a verdict has been rendered against a defendant, the court may, upon his application, grant a new trial, in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony.
2. When the jury has received any evidence out of court other than that resulting from a view of the premises.
3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.
4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.
5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.
6. When the verdict is contrary to law or evidence.
7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

Grounds for new trial.—This section clearly excludes all other grounds—43 Cal. 146, overruling Cal. 298. Instead of appealing from the judgment, a defendant may move for a new trial on any or all of the grounds mentioned in this section, and if the motion be denied, may assert the draft of a bill of exceptions, and have the same settled as provided in § 1184. 53 Cal. 184. See *ante* § 1162.

Subd. 1. It is not sufficient simply to object that defendant was not present at times when acts can only be done in his presence, he must prove his absence—4 Cal. 118, 37 id. 24.

Subd. 2. Where a witness conversed with one or more of the jurors on the facts of the case, while out of court to view the premises, it was error—4 Cal. 167. See *ante* § 1162.

Subd. 3. A separation of the jury in a capital case is *prima facie* ground for a new trial, subject to be rebutted by proof that no improper influence reached the jury. 22 Cal. 348, 1 Ark. 732; 1 Conn. 491, 19 Conn. 485, 20 Ga. 752; 8 Humph. 597, 11 Ind. 514; 21 Ill. 373, 30 id. 256; 1 Ind. 151; 1 Kan. 340; 1 Cowen, 26; 39 Miss. 721, 2 Minn. 444; 7 N. H.

the evidence was, or the question as to the sufficiency or insufficiency of the evidence cannot be considered. 41 Cal 46. The weight of the evidence is for the jury to decide, but there must be such evidence as would lead a jury to produce the verdict. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46.

The defendant may move for a new trial on the ground of passion or prejudice. 100 Cal 46. The weight of the evidence is for the jury to decide, but there must be such evidence as would lead a jury to produce the verdict. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46.

If it is claimed that the evidence is not sufficient to support a verdict, the court will consider the evidence. 100 Cal 46. The weight of the evidence is for the jury to decide, but there must be such evidence as would lead a jury to produce the verdict. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46.

A new trial will not be granted on the ground of passion or prejudice. 100 Cal 46. The weight of the evidence is for the jury to decide, but there must be such evidence as would lead a jury to produce the verdict. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46. A verdict of passion or prejudice is not a verdict of law. 100 Cal 46.

CHAPTER VII.

ARREST OF JUDGMENT.

- § 1185. Motion in arrest of judgment.
 § 1186. Court may arrest judgment without motion.
 § 1187. Effect of arresting judgment.
 § 1188. Defendant, when to be held or discharged.

1185. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal.

It may be founded on any of the defects in the indictment or information mentioned in section one thousand and four, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. [In effect April 9th, 1880.]

Arrest of judgment.—A motion in arrest of judgment is a proceeding on behalf of a prisoner, after verdict, and before sentence and judgment for error appearing out of the record. 43 N. Y. 28. Application for an order is made ex parte. Making out and filing written objections is not sufficient. See petition of the court as to calling for it, and the court is moved to grant it. 41 Cal. 650. A motion must be founded on some of the defects mentioned in 41 Cal. 509, 11 253. It may be made on any of the grounds of error, and the motion thereon had may be reviewed on appeal.—See ante, § 90.

When the statute enumerates the grounds upon which judgment may be arrested, as are excluded—43 Cal. 157, 24 Cal. 706. It can be called for matter apparent upon an inspection of the record. 33 Me. 502, 40 Ill. 530, and former cases not affecting rights, do not authorize an arrest of judgment. 27 Cal. 400. Verdict errors and omissions in the indictment. 40 Id. 388, 40, 20 Pick. 350, 3 Ill. 185, C. 1, 6 Tex. Ct. App. 435.

A motion in arrest of judgment, based on defects in the indictment specifically set out the defects to entitle the party to complain to the Supreme Court. 37 Cal. 217. See ante, § 364. If the court finds no good cause, the overruling of the demurrer is affirmed. 6 Cal. 116. If the defendant fails to demur, he cannot arrest judgment on the ground that the indictment is defective. 41 Cal. 509. If the indictment is defective, as an offense, the court cannot arrest judgment on the ground that the facts stated in it do not constitute a public offense, even if judgment is pronounced for acquittal. 49 Cal. 290. If the objection, that more than one of-

offense is charged, is not taken by demurrer, it cannot be considered an arrest of judgment—27 Cal. 403.

An indictment which charges that defendant was in the room where it was fired, and then and there feloniously burned a building, suffices to show that the offense was committed at a place within the jurisdiction—44 Cal. 43. A variance in the name of the defendant given in the indictment for arson, is not a ground for arrest of judgment—44 Cal. 25, 32 Cal. 160. An order granting a motion for arrest of judgment, on account of alleged defects in the indictment, will be set aside and appealable—44 Cal. 384, see 42 Cal. 625. It is an order of the court, but may be made upon the whole record—Hankins v. People.

The judgment cannot be sustained where defendant had not been arraigned—44 Cal. 34. Where there was no plea and no issue, the court cannot arrest judgment—44 Cal. 92. If the offense is committed in a county where the indictment is found, the court should not arrest judgment—44 Cal. 340, but where the offense is committed partly in one county and partly in another, and some transactions are elsewhere—29 Cal. 403. If a committing magistrate promises a person that, if he will become a witness for the people against others, he shall be acquitted, and induced by such promises he testifies and implicates himself and is afterward indicted, these facts do not furnish ground for arrest of judgment—43 Cal. 231.

1186. The court may also, on its own view of any of these defects, arrest the judgment without motion.

Court may arrest judgment. A court may, of its own motion or upon application of a party interested, modify or set aside a verdict or order, so the court may, upon its own view of fatal defects in an indictment, arrest the judgment without motion—44 Cal. 34. Where the indictment charges that the offense was committed in a county other than that where the indictment was found, the court may arrest the judgment on its own motion—27 Cal. 341.

verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated, or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded. [In effect April 9th, 1880.]

Discharge of defendant. The defendant cannot be discharged from the indictment without trial, except in the cases provided by statute—43 Cal. 230. If from the evidence there is reason to believe the defendant guilty, and a new indictment can be framed, the court may order him to be recommitted to the officers of the proper county, or admitted to bail to answer the new indictment—44 Cal. 34. Where a verdict was received and recorded by the clerk, and the court then directed the jury to retire in custody of the sheriff, and amend their verdict to conform to the phraseology of the law, it is mere error to be corrected on appeal, and does not render the judgment void so as to warrant a discharge on habeas corpus—44 Cal. 35; 6 Id. 503; 30 Id. 214. *See post*, § 1485.

JUDGMENT AND EXECUTION.

TITLE VIII.

Of Judgment and Execution.

- CHAP. I. THE JUDGMENT, §§ 1191-1207.**
II. THE EXECUTION, §§ 1213-30.
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CHAPTER I.

THE JUDGMENT.

Appointing time for judgment.
 Upon plea of guilty, court must determine degree.
 Presence of defendant.
 Defendant in custody, how brought for judgment.
 How brought before the court when on bail.
 Bench-warrant to issue.
 Term of bench-warrant.
 Warrant, how served.
 Arrest of defendant.
 Arraignment of defendant for judgment.
 What cause may be shown against the judgment.
 If no cause shown, judgment to be pronounced.
 Circumstances in aggravation or mitigation of punishment.
 Proof of former conviction, etc., in mitigation, how made.
 Duration of imprisonment on judgment to pay a fine.
 Judgment to pay a fine constitutes a lien.
 Entry of judgment and judgment roll.

After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction and acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncement, which, in cases of felony, must be at least ten days after the verdict, if the court intend to remain in session so long, but if not, then at as remote a time as may reasonably be allowed. [Approved March 30th, in 1874.]

Time for judgment.—A judgment cannot be pronounced until the verdict is complete and is recorded in the minutes—6 Pac. 115. It is not error for the court to name the day for passing judgment when the defendant is not in court—9 Cal. 115. The defendant may waive the statutory time, and consent that judgment be pronounced immediately—46 Cal. 96, as a party may waive a right to a jury trial—13 Cal. 115. It is doubtful whether the limitation fixed by the Code applies in case of a judgment on a plea of guilty—28 Cal. 488. A judge who did not preside at the trial, may, if called at the time fixed, pronounce judgment—28 Cal. 488.

The time at which the sentence shall be carried into effect forms part of the judgment—3 Ired. 204. A mandate will not issue to compel a court to render judgment of acquittal in a criminal case—45 Ga. 22. See ante, § 1155, note.

1192 Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

Court to determine degree—Upon the plea of guilty, the court must determine the degree—52 Cal. 454, 49 Id. 179, 20 Id. 166, 21 Id. 167. It must be done before passing sentence—52 Cal. 454. On a plea of guilty it is not necessary that any time should elapse before the determination by the court of the degree of the crime and the pronouncing of the judgment—20 Cal. 166, nor that the degree should be expressed in any particular form. Any decision or judgment which shows the conclusions derived from the examination of the facts in compliance with the statute—20 Cal. 166.

If the jury convict of murder in the first degree, and cannot agree upon the degree of punishment, or do not declare it in their verdict, it is the duty of the court to pronounce judgment of death—40 Cal. 166. The presumption is, that the court, by testimony, as to the degree, pronounces a sentence of imprisonment where defendant is guilty of murder, was a nullity—32 Cal. 48. If a proceeding against a defendant is not a trial and the defendant has not the right to a trial, a question decided by a jury—20 Cal. 166. If a defendant's conviction is overturned, and the defendant refuses to plead, the court pronounces judgment of death as on a plea of guilty—20 Cal. 166. Where there has been a general verdict of guilty, and the indictment containing several counts for offenses of different grades, a sentence on the count for the highest grade is proper—15 Y. 487.

1193 For the purpose of judgment, if the count is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

Presence of defendant—42 Cal. 166. Upon a conviction for felony it is necessary that the defendant should be present when judgment is pronounced—4 Cal. 166, 11 Id. 115, but the court may, in the absence of the defendant, fix the day for pronouncing judgment. Absence of defendant is not, per se, fatal to the sentence—15 Cal. 166, 5 Id. 115, 6 Pa. St. 186; 1 R. 107, 90. Where the defendant is present, or where the punishment is imprisonment, the defendant, at his own expense, being under recognition, may be absent—1 Cal. 145, 7 Cowen 55, 4 Iowa 351, 9 Dana, 304, 12 Ark. 167, Wend 344, 16 Pa. St. 129, 36 Miss. 531, 9 Ill. 111.

1194 When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

1195 If the defendant has been discharged on bail, and has deposited money instead thereof, and does not appear for judgment when his personal appearance is required,

the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

1196. The clerk, on the application of the district attorney, may, at any time after the order, whether the court be sitting or not, issue a bench-warrant into one or more counties

1197. The bench-warrant must be substantially in the following form: "County of _____. The People of the State of California, to any sheriff, constable, marshal, or policeman in this State: A. B., having been on the ____ day of _____ A. D. eighteen hundred and _____, duly convicted in the Superior Court of the County of _____, of the crime of _____ (designating it generally), you are therefore commanded forthwith to arrest the above named A. B., and bring him before that court for judgment. Given under my hand with the seal of said court affixed, this ____ day of _____, A. D. eighteen hundred and _____. By order of the Court. [SEAL.] E F., Clerk."

[In effect April 12th, 1880.]

1198. The bench-warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county.

1199. Whether the bench-warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

1200. When the defendant appears for judgment, he must be informed by the court, or by the clerk, under its direction, of the nature of the charge against him, and of his plea, and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him. [In effect April 9th, 1880.]

1201. He may show, for cause against the judge

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of insanity must be tried as provided in chapter six, title ten, part two of this Code. If, upon trial of that question, the jury find that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to the State lunatic asylum until he becomes sane; and when notice is given of that fact provided in section one thousand three hundred seventy-two, he must be brought before the court for judgment.

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court, in its discretion, order the judgment to be deferred, or proceed to decide upon a motion in arrest of judgment for a new trial.

Cause shown against judgment.—If the prisoner objects to the judgment, and was absent at the time of trial, or rendition of verdict, or passing sentence, he must prove it—4 Cal. 218.

1202. If no sufficient cause is alleged or appears



on the date of his incarceration"—23 Id. 265, or, that defendant be imprisoned for a specified term, to commence at the expiration of previous sentences" is valid—22 Id. 135. A judgment of conviction could be affirmed, although subject to no future decision of the Legislature—1 Blackf. 17. Errors or omissions in the entry of judgment, such as a clerical error upon a plea and not on the facts, corpus 431 a, 457. Error which will render a judgment void is the want of jurisdiction, or a proceeding in violation of procedure but a defect which renders a judgment void is such an illegality as is contrary to the principles of law—31 Cal. 62. A judgment upon conviction of a misdemeanor, which adjudges imprisonment in the State prison, is void—Cal. 45.

1203. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

Discretion of court. When the verdict is guilty, the court may, of course, in its discretion, take notice of a previous conviction of the defendant on the law records, or hear proof of his character and antecedents, either to aggravate or extenuate his guilt—23 Cal. 43, 20 A. 20, 22 Id. 135. *Park 206.* Statutes providing for an increased punishment for a second offense are not in conflict with the constitutional provisions which require a trial by jury—4 Cal. 317, 19 Pa. 551. As a general rule, the power which is posed by a court of records with the power of a court of record may be exercised at any time during the term—44 Cal. 8 Bl. Ch. 32 Ohio St. 115 2 Allen 144 1 P. 115. 169, see 3 Wall 514 100 28 Cal. 13. The judgment may be corrected at any time during the term—1 Parker Cr. R. 311, 1 Wheat. 22, 5 Grant 692.

Where the court, after conviction of murder, sentenced the prisoner to be executed, and afterward caused him to be again brought into court, and sentenced him to be executed by shooting, the time, it was held, ran—4 Cal. 18. When a term of imprisonment is stated and expired, the proper course is to state that the sentence has expired, and to begin at the expiration of the first, to be specially referred to in the sentence—Cal. 125 5 M. 367 1 M. 54, 18 Oa. 8 45 5 Day 15, 4 W. 10, 1 Pa. St. 611 12 Geo. 11 d. 39. After sentence but before judgment is given, it may be amended by shortening the time—Cal. 228. See ante, § 100, note.

1204. The circumstances must be presented by the testimony of witnesses examined in open court, except when a witness is so sick or infirm as to be unable to stand, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be read to or received by the court, or a judge thereof, in

aggravation or mitigation of the punishment, as provided in this and the preceding section.

See ante, § 168, note.

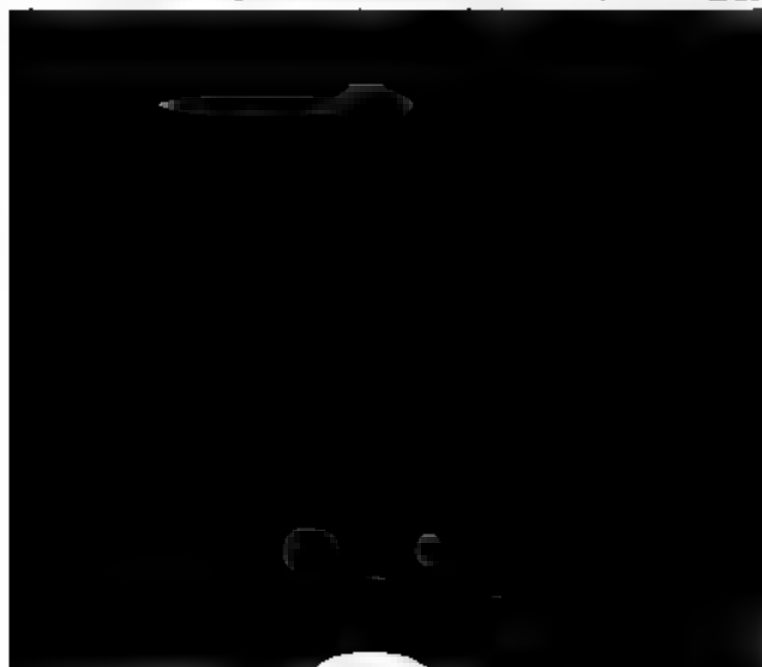
1205. A judgment that the defendant pay a fine also direct that he be imprisoned until the fine is paid, specifying the extent of imprisonment, which shall not exceed one day for every dollar of the fine. [Repealed March 7th, 1874.]

Imprisonment to satisfy fine.—The defendant may be imprisoned to enforce the payment of a fine—7 Cal. 209. The prisoner may be credited with two dollars per day while in prison—28 Cal. 41. A person who is arrested for a misdemeanor and is not bailed may be fined five hundred dollars, and in default of payment he may be imprisoned not exceeding three hundred days, as in compliance with this section—54 Cal. 206; 28 Id. 414.

1206. A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for damages rendered in a civil action.

See post, § 1570.

1207. When judgment upon a conviction is rendered, the clerk must enter the same in the minutes of the court, briefly the offense for which the conviction was rendered, the fact of a prior conviction, (if one) and must



CHAPTER II.

THE EXECUTION

- 1213. Execution of a judgment other than of death.
- 1214. If for fine alone, execution to issue as in civil cases.
- 1215. Judgment of fine and imprisonment, how executed.
- 1216. Judgment of imprisonment. Duty of sheriff.
- 1217. Execution upon judgment of death.
- 1218. Transmission of conviction and testimony to governor.
- 1219. Governor may require opinion of Supreme Court thereon.
- 1220. Judgment of death, when suspended.
- 1221. Insanity of defendant, how determined.
- 1222. Duty of district attorney upon inquisition.
- 1223. Inquisition, how certified and filed.
- 1224. Proceedings upon finding of jury.
- 1225. Proceedings when female is supposed to be pregnant.
- 1226. Proceedings upon the finding of the jury.
- 1227. Judgment of death remaining in force, not executed.
- 1228. Punishment of death, how inflicted.
- 1229. Execution, where to take place and who to be present.
- 1230. Return upon death-warrant.

1213. When a judgment, other than of death, has been pronounced a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

Execution of judgment. A commitment which does not contain a copy of the judgment, but merely recites the history of the action, is not sufficient authority for the detention of the prisoner—31 Cal. 477, 481, 482. No other authority for the detention of a prisoner is required than a certified copy of the judgment rendered against him—32 Cal. 3, 4, 619, 28 Ill. 247.

1214. If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.
See ante, § 1206.

1215. If the judgment is for imprisonment, or a fine, and imprisonment until it be paid, the defendant must

forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

See *ante*, § 1205.

1216. If the judgment is for imprisonment in the State prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the State prison. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

See *ante*, § 1213.

1217. When judgment of death is rendered, a warrant signed by the judge, and attested by the clerk under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of judgment.

Execution of death sentence.—The day for execution of the sentence should not be designated in the judgment, but in the warrant of execution. 45 Cal. 141, 38 P. 609, 45 Id. 141; 54 Id. 92. If the judgment of death is not executed on the day appointed, the court may order the execution to be carried out on any day for which it may be lawfully executed. In such case the warrant of the court for the execution of the sentence shall be valid.

Sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected by the supervisors for the year a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney of the county.

1222 The district attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

1223 A certificate of the inquisition must be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

1224. If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the governor or from the judge of the court by which the judgment was rendered directing the execution of the judgment. If the inquisition finds that the defendant is insane, the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

1225 If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of the county, and the provisions of section one thousand two hundred and twenty-two and one thousand two hundred and twenty-three apply to the proceedings upon the inquisition.

1226. If it is found by the inquisition that is not pregnant, the sheriff must execute the judgment. If it is found that the woman is pregnant, the sheriff must suspend the execution of the judgment, and refer the inquisition to the governor. When the governor has ascertained that the female is no longer pregnant, he must issue his warrant appointing a day for the execution of the judgment.

1227. If for any reason a judgment of death has not been executed, and it remains in force, the court, after the conviction was had, on the application of the attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension to be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no reasons exist against the execution of the judgment, it must make an order that the sheriff execute the judgment at the specified time. The sheriff must execute the judgment accordingly.

The Superior Court as successor of the District Court shall carry into execution a judgment of death rendered by the District Court. An order for execution of a judgment of death shall be in the following form:



tioned in this section can be present at the execution, nor
can any person under age be allowed to witness the same.

1230. After the execution, the sheriff must make a
return upon the death-warrant, showing the time, mode,
and manner in which it was executed.

APPEALS TO SUPREME COURT.

TITLE IX.

Of Appeals to the Supreme Court.

CHAP. I. APPEALS, WHEN ALLOWED AND HOW TAKEN
AND THE EFFECT THEREOF, §§ 1233-46.

II. DISMISSING AN APPEAL FOR IRREGULARITY
§§ 1248-9

THE APPEAL, §§ 1252-5.

CHAPTER I

APPEALS, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

- § 1235. Appeal, by whom taken, on questions of law alone.
- § 1236. Parties, how designated on appeal.
- § 1237. Appeal, when may be taken by the defendant.
- § 1238. In what cases by the people.
- § 1239. Appeals, within what time to be taken.
- § 1240. Appeal, how taken.
- § 1241. When notice may be served by publication.
- § 1242. Effect of an appeal by the people.
- § 1243. Effect of an appeal by the defendant.
- § 1244. Same.
- § 1245. Same.
- § 1246. Duty of clerks upon appeal.

1235. Either party in a criminal action amounting to felony, may appeal to the Supreme Court, on questions of law alone, as prescribed in this chapter.

Appeal, when allowed. The Supreme Court, under the Constitution, had jurisdiction on questions of law alone—55 Cal. 185. An appeal does not lie in cases of misdemeanor—53 Cal. 427. An appeal lies in a judgment for contempt, when the fine is for more than one hundred dollars—47 Cal. 121. A question of law is where the verdict is compounded of as being contrary to the evidence when there is no evidence to sustain the charge, not where there is evidence tending to prove it—55 Cal. 185. If an appeal has been given in all cases within the jurisdiction of the court, and afterward its jurisdiction is extended to new cases, an appeal will lie in those new cases—4 Mass. 462.

1236. The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

1237. An appeal may be taken by the defendant:

From a final judgment of conviction.

From an order denying a motion for a new trial.

From an order made after judgment, affecting the substantial rights of the party.

In what cases defendant may take.—When the action of the court is manifestly erroneous under any and every conceivable state of the

facts, the Supreme Court will review the case, notwithstanding evidence may not have been brought up—47 Cal. 498; 2 id. 498; 1 id. 493; 45 id. 25; 33 id. 213; 43 id. 829. If the record discloses the fact a written instrument introduced in evidence was a forgery, the same may be raised for the first time in the Supreme Court—38 Cal. 421. The action of the court in discharging a jury in a criminal case because of its inability to agree, is subject to review by the supreme court—41 Cal. 219.

Subd. 1. Under this section an appeal can be taken from orders only as are made after final judgment—42 Cal. 825. So, an appeal cannot be taken from an order made after a verdict of guilty arresting the judgment—44 Cal. 385.

Subd. 2. The question whether a defendant in a criminal case is entitled to a new trial, on the ground that the verdict is contrary to the evidence, is one of law—31 Cal. 585. The general rule is, the court will not review a judgment on this ground, unless the record contains a statement setting forth the material portions of the testimony, but if it states that it gives "in substance all that was said on the part of the State," it is sufficient—9 Cal. 421. An appeal by a defendant does not lie from an order granting a new trial—4 Cal. J. 1013.

Subd. 3. This section applies to orders made after final judgment which could not be reviewed upon an appeal from the judgment—Cal. 385, 42 id. 825. Any error committed by the court in setting aside or modifying an erroneous order may be reviewed in a criminal case upon appeal, but not on habeas corpus—44 Cal. 34. Where a person held in custody under an erroneous order, regular upon its face, the court had power to make, he cannot be discharged on habeas corpus, his remedy is by appeal—44 Cal. 35; 41 id. 211; 38 id. 421. An appeal lies from an order for execution in a murder case—44 Cal.

1238 An appeal may be taken by the people:

1. In a criminal case, by the defendant on a demand



APPEALS, WHEN ALLOWED. §§ 1239-42

ard does not set out the evidence on which it was made, the court will presume that the motion was properly overruled - 71.

1. Error in setting aside or modifying an erroneous order reversed in a proper case on application, but it cannot be based on habeas corpus - 44 Cal 34. No appeal lies from an order for a charge once ignored to be resubmitted to another grand jury. The only orders from which appeals lie are, orders made after judgment, orders before that are reviewable only on appeal from judgment, or an order granting or refusing a new trial - 42 Cal 44 Id. 285. No appeal lies from an order of the judge admitting a party to bail under the provisions relating to habeas corpus - 40

2. An appeal from a judgment must be taken within one year after its rendition, and from an order, within sixty days after it is made.

3. In what time taken.—An appeal from an order denying a new trial be dismissed if taken more than sixty days after the order - 43 Cal. 630.

4. An appeal is taken by filing with the clerk of court in which the judgment or order appealed from was rendered or filed, a notice stating the appeal from the judgment and serving a copy thereof upon the attorney of the adverse party.

5. Appeal, how taken.—A notice of appeal must be filed with the clerk of the court, and served on the attorney of the adverse party personally or by publication, as directed in the Code - 49 Cal. 49. Where it appears that the notice was filed on a certain day, and was admitted under the inorsement of filing, it will be presumed service was made on the day of filing - 6 Pac. C. L. J. 465. A notice of appeal in a criminal case may be signed by any attorney authorized by defendant to take an appeal - 6 Pac. C. L. J. 104.

6. Appeal, that notice of application has been served and filed, is no proof that an appeal has been taken - 45 Cal. 45. The record must show that an appeal has in fact been taken, or the court will not be bound to look into the case - 45 Cal. 45. In the absence of statutory authority for appeal, a case may be brought to the Supreme Court by writ of error - 52 Cal. 220, 3 Id. 190; 3 Id. 247, 24 Id. 334; but a writ of error will not lie when an appeal is given - 24 Cal. 334, see 23 Cal. 93.

7. If personal service of the notice cannot be made, the clerk of the court in which the action was tried, upon application thereof, may make an order for the publication of the notice in some newspaper, for a period not exceeding thirty days.

8. Such publication is equivalent to personal service. See, § 1240, note.

9. An appeal taken by the people in no case stays the operation of a judgment in favor of the defendant, until judgment is reversed.

10. CODE—43.

1243. An appeal to the Supreme Court from a judgment of conviction, stays the execution of the judgment in all capital cases, and in all other cases upon filing with the clerk of the court in which the conviction was had, a certificate of the judge of such court, or of a justice of the Supreme Court, that, in his opinion, there is probable cause for the appeal, but not otherwise. [Approved March 30th, in effect July 1st, 1874.]

Effect of appeal.—Under the provisions of this section, bail may not be allowed after conviction, except by a judge of the court in which the conviction was had, or by a justice of the Supreme Court, and then, only when the circumstances are of an extraordinary character. 49 Cal. 690, 54 Cal. 35; and as a matter of discretion, 44 Cal. 20. The judge of the court in which the conviction was had is to state in his opinion there is probable cause for the appeal, and the justices of the Supreme Court are satisfied that no error has been committed, they will not grant such a certificate, and the appeal will not stay the execution. 43 Cal. 305. See preceding sections.

1244. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal.

See ante, § 1242, note.

1245. If before the granting of the certificate, judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

See ante, § 1242, note.

1246. Upon the appeal being taken, the clerk of the court with whom the notice of appeal is filed must, in twenty days thereafter, in case the bill of exceptions has been settled by the judge before the giving of notice, but if not, then within twenty days from the filing of the bill of exceptions, without charge, transmit to the clerk of the appellate court fifteen printed copies (one of which shall be certified to and be the original) of the notice of appeal, the record and of all bills of exceptions, and upon receipt thereof, the clerk

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

§ 1248. For what irregularity, and how dismissed.

§ 1249. Dismissal for want of a return.

1248. If the appeal is irregular in any substantial particular, but not otherwise, the appellate court may, on any day, on motion of the respondent, upon five days' notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed. [In effect April 9th, 1880.]

1249. The court may also, upon like motion, dismiss the appeal, if the return is not made as provided in section one thousand two hundred and forty-six, unless for good cause they enlarge the time for the purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

- § 1252. Appeals, when to be heard and determined.
- § 1253. Judgment cannot be reversed without argument.
- § 1254. Number of counsel to be heard.
- § 1255. Defendant need not be present.

1252. All appeals in criminal cases must be heard and determined by the appellate court, within sixty days after the record is filed in said appellate court, unless continued on motion or with the consent of the defendant. [In effect April 9th, 1890.]

1253. The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear.

See 55 Cal. 298.

1254. Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.

See 55 Cal. 298.

1255. The defendant need not personally appear in the appellate court.

See 55 Cal. 298.

CHAPTER IV.

JUDGMENT UPON APPEAL.

- § 1258. Judgment without regard to technical errors.
- § 1259. What may be reviewed on an appeal by defendant.
- § 1260. May reverse, affirm, or modify the judgment, and a trial.
- § 1261. New trial, where to be had.
- § 1262. Defendant discharged on reversal of judgment.
- § 1263. Judgment to be executed on affirmance.
- § 1264. Judgment of appellate court, how entered and rank.
- § 1265. Jurisdiction ceases after judgment remitted.

1258. After hearing the appeal, the court may give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

Technical errors and defects.—On the hearing on appeal, the court will give judgment without regard to technical errors or defects, or to exceptions which do not affect substantial rights of the parties. Cal. Civ. Code § 461. A trial court is not bound by its own errors or defects, if they do not affect the substantial rights of the parties.



When judgment not disturbed. Error must affirmatively appear, or the Supreme Court will not reverse the judgment—8 Cal. 202; 18 Id. 30, 17 Id. 214, Id. 363, Id. 380, 19 Id. 470, 27 Id. 507, 43 Id. 55, Id. 178. Where no one appeared for a petitioner, nor were any points or authorities filed, an affirming judgment will be affirmed—5 Pac. C. L. J. 160. Questions of error cannot be required into—44 Cal. 590. Errors on abstract principles of law will not be reversed by the Supreme Court—44 Cal. 451. In the absence of a bill of exceptions, the court is unable to determine whether it would if settled and signed, tend to manifest any error committed at the trial—44 Cal. 511, 18 Id. 472, 46 Id. 51, Bush 21. Intentments go to the support of the action of the court below, where a portion of the evidence is brought up—43 Cal. 108. If the testimony is not in the record, a judgment will not be reversed for error in instructions, if, from the nature of the case, testimony might have been introduced which would have warranted them—45 Cal. 301, 45 Id. 322.

New trial. Where instructions are contradictory on a material point there shall be a new trial—44 Cal. 69, 39 Id. 36, 39 Id. 57, 43 Id. 55, 41 Id. 1, 1 Id. 354. Where the verdict is against the evidence, the judgment shall be set aside—6 Pac. C. L. J. 89. If there is a substantial difference of evidence the verdict will not be disturbed—53 Cal. 177, 50 Id. 308. If the verdict in a trial case is against the evidence sustained by the evidence, the judgment will be reversed—30 C. J. 531. The judgment will not be disturbed on the ground that evidence is insufficient to justify the verdict, unless there is either a total deficiency of evidence, or it preponderates so greatly against the verdict that the appellate court at the jury must have been under the influence of passion or prejudice—44 Cal. 30, but the Supreme Court will not deal with the question of mere preponderance of evidence—47 Cal. 101. Where a new trial from an error granting a new trial there is no evidence to show that the affidavits contained in the transcript were made for reference to the motion, the question will not be considered—42 C. L. J. 533, see 6 Pac. C. L. J. 443. On appeal from an order granting a new trial, the appellate court is confined to a review of the proceedings between issue joined and the rendition of the verdict—39 Cal. 30.

1261 When a new trial is ordered, it must be directed to be laid in the court of the county from which the appeal was taken.

1262. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom, or if on bail, that his bail be exonerated, or if money was deposited instead of bail, that it be refunded to the defendant.

1263 If a judgment against the defendant is affirmed, the original judgment must be enforced.

1264 When the judgment of the appellate court is given it must be entered in the minutes and a certified copy of the entry forthwith remitted to the clerk of the court from which the appeal was taken.

Judgment to be remitted.—The judgment of the appellate court required to be certified to the lower court, that the original judgment may be carried into effect, as directed by the appellate tribunal—41 Cal. 211.

1263. After the certificate of the judgment has been remitted to the court below, the appellate court has further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate is remitted.

Jurisdiction, when ceases.—After remittitur, the Supreme Court loses all jurisdiction, and the lower court can make all orders necessary to carry the judgment into execution by proceedings in the lower court—41 Cal. 211. Upon the affirmance of an order or judgment, no act of the appellate court is necessary directing the court below to force judgment—39 Cal. 102. After judgment affirmed, a second commitment need only recite the judgment of conviction, that defendant appealed, and judgment was affirmed. It need not recite the judgment of the lower court, or that the remittitur had been issued—41 Cal. 210. *Nisi prius* courts cannot set aside or disregard declaration of the Supreme Court, because it may seem to them unsound—43 Cal.

MISCELLANEOUS PROCEEDINGS.

TITLE X.

Miscellaneous Proceedings.

- CHAP I. BAIL, §§ 1268-1317.
- II. WHO MAY BE WITNESSES IN CRIMINAL ACTIONS, §§ 1321-3.
- III. COMPELLING THE ATTENDANCE OF WITNESSES, §§ 1326-33.
- IV. EXAMINATION OF WITNESSES CONDITIONALLY, §§ 1335-46.
- V. EXAMINATION OF WITNESSES ON COMMISSION, §§ 1349-62.
- VI. INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION, §§ 1367-73.
- VII. COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT, §§ 1377-9.
- VIII. DISMISSAL OF THE ACTION, BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE, §§ 1382-7.
- IX. PROCEEDINGS AGAINST CORPORATIONS, §§ 1390-7.
- X. ENTITLING AFFIDAVITS, § 1401.
- XI. ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS, § 1404.
- XII. DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED, §§ 1407-13.
- XIII. REPRIEVES, COMMUTATIONS, AND PARDONS, §§ 1417-23.

CHAPTER I.

BAIL.

ART. I. *In what cases the defendant may be admitted to bail.*

II. *Bail upon being held to answer before indictment.*

III. *Bail upon an indictment before conviction.*

IV. *Bail on appeal.*

V. *Deposit instead of bail.*

VI. *Surrender of the defendant.*

VII. *Forfeiture of the undertaking of bail or of the deposit of money.*

VIII. *Recommitment of the defendant after having given bail or deposited money instead of bail.*

ARTICLE I.

In what cases the defendant may be admitted to bail.



ing to the terms of the undertaking, or that the bail will pay to the people of this State a specified sum.

Taking bail defined.—A prisoner arrested for felony must, in order to procure bail, be taken before the magistrate who issued the warrant, or some other magistrate in the same county—54 Cal. 103. In fixing the amount of bail, the sole purpose should be to cause the appearance of the accused to answer the charge—54 Cal. 75, see *ante*, § 822. The sum of one hundred and twelve thousand dollars is not excessive for ten distinct felonies, such being the amount alleged to have been taken by the prisoner by reason of said felonies—53 Cal. 410. Fifteen thousand dollars is not excessive on the charge of assault to murder—44 Cal. 555. See *ante*, § 822.

1270. A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom.

Offense not bailable.—Admission to bail in capital cases, where the proof is evident and the presumption great, may be made matter of discretion, or may be forbidden by legislation—19 Cal. 541; 54 Cal. 103, Const. Prov. *ante*, page 15. See *ante*, § 821.

1271. If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

Bail as matter of right.—In all other than capital cases, bail is a matter of right—see 54 Cal. 103; Const. Prov. *ante*, page 15. Where the jury are unable to agree upon a verdict, and were discharged without consent, thereby protracting defendant's confinement in addition to being in prison until before trial, he should be admitted to bail—41 Cal. 20. The practice of admitting persons charged with felony to bail, without an examination of witnesses for the people, is unauthorized by statute—39 Cal. 755. The constitution declaring bail a matter of right, contemplates only those cases in which the party has not been convicted—41 Cal. 29, 7 Peters, 568.

1272 After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail—

1. As a matter of right, when the appeal is from a judgment imposing a fine only.
2. As a matter of discretion in all other cases.

Admission to bail is a matter in the discretion of the judge—48 Cal. 1d 553, 41 id. 36, 44 id. 555, and it ought in the first instance to be exercised by the court or judge who tried the case—48 Cal. 553. Statutes making bail after conviction a matter of discretion, are constitutional—41 Cal. 29. It is a discretion measured by legal rules and by reference to the analogies of the law—49 Cal. 680; 48 id. 5.

1273. If the offense is bailable, the defendant may be admitted to bail before conviction—

1. For his appearance before the magistrate, on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate is required to return the depositions and statement, after the defendant being held to answer after examination.

3. After indictment, either before the bench-warrant is issued for his arrest, or upon any order of the court, admitting him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment at the court in which it is found, or to which it may be transferred for trial.

And after conviction, and upon an appeal—

1. If the appeal is from a judgment imposing a term only, on the undertaking of bail that he will pay the sum, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

2. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, after its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof.

[Approved February 15th, 1876.]

See *ante*, § 1269, and note.

Subd. 3. If a party be committed for an alleged offense, and an indictment be found against him, in a proceeding as to increasing or diminishing his bail, his guilt will be presumed.—44 Cal. 557, see 44 Cal. 580; 19 Id. 539, and see *ante*, § 1270.

1274. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the district attorney of the county.

ARTICLE II.

Bail upon being held to answer before indictment.

- § 1277. What magistrates may admit to bail.
- § 1278. Bail, how put in, and form of the undertaking.
- § 1279. Qualifications of bail.
- § 1280. Bail, how to justify.
- § 1281. On allowance of bail, defendant to be discharged.

1277. When the defendant has been held to answer upon an examination for a public offense, the admission of bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of *habeas corpus*.

1278. Bail is put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the magistrate) and acknowledged before the court or magistrate, in substantially the following form:

"An order having been made on the — day of —, A. D. eighteen —, by A. B., a justice of the peace of — county, (or as the case may be, that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of — dollars, we, E. F. and G. H., (stating their place of residence, and occupation) hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof, or, if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of — dollars (inserting the sum in which the defendant is admitted to bail)

Bail-bond. — Bail is taken by a recognizance executed by sureties, and the accused need not sign it, and upon forfeiture the proceeding is on recognizance can only be by action against the sureties. 10 Cal. 516.
Bail-bond need not state in what court defendant shall appear, as the

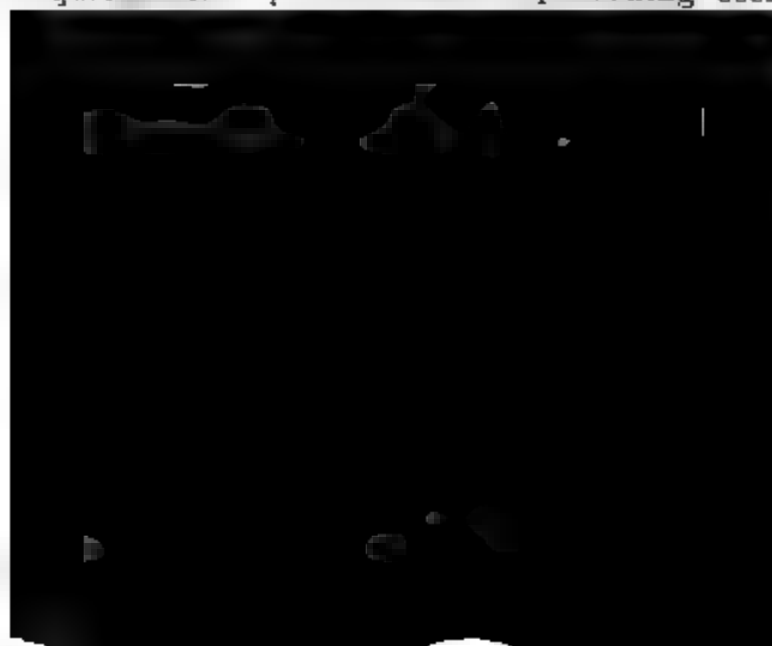
law provides in what court he shall be tried—7 Cal. 402. 1 applies to the bond to be given for appearance before the on examination—54 Cal. 408. The recital in the bail-bond on the obligors—54 Cal. 408. The liability of the sureties soon as the party is released, and it is fixed by a breach of tions and a forfeiture declared and entered in the court. The justification forms no part of the contract—37 Cal. 271. Forsement of approval on the recognizance is necessary—3 is id. 498.

1279. The qualifications of bail are as follow

1. Each of them must be a resident, householder freeholder within the State; but the court or n may refuse to accept any person as bail who is i dent of the county where bail is offered.

2. They must each be worth the amount sp the undertaking, exclusive of property exempt cution; but the court or magistrate, on taking allow more than two sureties to justify sev amounts less than that expressed in the under the whole justification be equivalent to that of bail.

1280. The bail must in all cases justify by taken before the magistrate, that they each p qualifications provided in the preceding sect



ARTICLE III.

Bail upon an indictment before conviction.

- § 1284. When offense is not capital.
- § 1285. When the offense is capital.
- § 1286. Bail on habeas corpus.
- § 1287. Form of undertaking
- § 1288. Sections applicable to qualifications, etc.
- § 1289. Increase or reduction of bail.

1284. When the offense charged is not punishable with death, the officer serving the bench-warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail. [In effect April 9th, 1880.]

1285. If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench-warrant. [In effect April 9th, 1880.]

1286. When the defendant is so delivered into custody, he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

1287. The bail must be put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate) and acknowledged before the court or magistrate, in substantially the following form:

“An indictment having been found on the — day of —, A. D. eighteen —, in the County Court of the county of —, charging A. B. with the crime of —, (designating it generally) and he having been admitted to bail in the sum of — dollars, we, C. D. and E. F., of —, (stating their place of residence and occupation) hereby undertake that the above named A. B. will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court.

and, if convicted, will appear for judgment and himself in execution thereof; or, if he fails to p either of these conditions, that we will pay to the of the State of California the sum of — dollars" ing the sum in which the defendant is admitted t

Undertaking.—The justification forms no part of the contr in no manner affects the liability of the sureties—37 Cal. 71. 1278, note; and *post*, § 1473, *et seq*.

1288. The provisions contained in sections twelve red and seventy-nine, twelve hundred and eight twelve hundred and eighty-one, in relation to bail indictment, apply to bail after indictment. [Ap March 30th, in effect July 1st, 1874.]

1289. After a defendant has been admitted upon an indictment or information, the court in the charge is pending may, upon good cause shown increase or reduce the amount of bail. If the amo increased, the court may order the defendant to b mitted to actual custody, unless he give bail in s creased amount. If application be made by the def for a reduction of the amount, notice of the appl



proportionate to the offense. A mere difference between the age and the committing magistrate is not sufficient to justify—54 Cal. 75, 49 id. 555. Upon an application to reduce bail after an indictment, the guilt of the prisoner is presumed—54 Cal. 80, 49 id. 555. See ante, § 1273, and note.

Bail on appeal. Admission to bail, pending appeal, after conviction for felony, is a matter of discretion and should not be allowed except under extraordinary circumstances—54 Cal. 75, 49 id. 681. Pending appeal a judge may admit to bail a prisoner convicted and sentenced for murder—18 Cal. 537. One who applies on *habeas corpus*, *per ingenuam*, and for a conviction for manslaughter must, in his petition, state facts on which the court can exercise an intelligent discretion, such as that in fact he has been doing him during the trial, and that the appeal has been taken in good faith and the like—Cal. 36. The authority of the superior judge, in case the writ of *habeas corpus* is made returnable before him, is the same as the authority of the supreme judge issuing the writ—51 Cal. 318, 49 id. 683. See ante, §§ 832-4, 829, 862, 674-5 982-3.

1292. The bail must possess the qualifications, and must be put in, in all respects, as provided in article two of this chapter, except that the undertaking must be conditioned as prescribed in section twelve hundred and twenty-three, for undertakings of bail on appeal.

ARTICLE V.

Deposit instead of bail.

§ 1293. Deposit, when and how made.

§ 1294. May, after bail is given and before forfeiture.

§ 1297. Deposit to be applied to payment of judgment and fine.

1295. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody.

1296. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

1297. When money has been deposited, if it remains a deposit at the time of a judgment for the payment of a fine, the county clerk must, under the direction of the

court, apply the money in satisfaction thereof, and if satisfying the fine and costs, must refund the surplus, if any, to the defendant.

ARTICLE VI

Surrender of the defendant.

- § 1300. Surrender, by whom, when, and how made.
- § 1301. Defendant, how surrendered.
- § 1302. Return of deposit on surrender.

1300. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their operation, or he may surrender himself, to the officer whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by certificate in writing acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending



to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

ARTICLE VII.

Forfeiture of the undertaking of bail or of the deposit of money.

- § 1305. How forfeited, and how forfeiture discharged.
- § 1306. Forfeiture to be enforced by action.
- § 1307. Deposit, when forfeited, how disposed of.

1305. If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

1306 If the forfeiture is not discharged, as provided in the last section, the district attorney may at any time after the adjournment of the court proceed by action only against the bail upon their undertaking.

1307 If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, immediately after the final adjournment of the court, pay over the money deposited to the county treasurer.

ARTICLE VIII.

Recommitment of the defendant, after having given bail deposited money instead of bail.

- § 1310. In what cases.
- § 1311. Contents of order.
- § 1312. Defendant may be arrested in any county.
- § 1313. If for failure to appear, defendant must be committed.
- § 1314. If for other cause, he may be admitted to bail.
- § 1315. Bail in such case, by whom taken.
- § 1316. Form of the undertaking.
- § 1317. Bail must possess what qualifications, and how put in.

1310. The court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, & his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has



1312. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county.

1313. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

1314. If the order be made for any other cause, and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

1315. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court.

1316. When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

"An order having been made on the — day of —, A. D. eighteen —, by the court, (naming it) that A. B. be admitted to bail in the sum of — dollars, in an action pending in that court against him in behalf of the people of the State of California, upon an (information, presentment, indictment, or appeal, as the case may be), we, C. G. and E. F., of (stating their places of residence and occupation), hereby undertake that the above named A. B. will appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or, if he fails to per-

form either of these conditions, that we will pay to the people of the State of California the sum of ——dollar," (insert the sum in which the defendant is admitted to bail).

1317. The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in article two of this chapter.



CHAPTER II.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

§ 1321. Who are competent witnesses.

§ 1322. When husband and wife are not competent witnesses.

§ 1323. When the defendant is not a competent witness.

1321. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this Code.

Witnesses - Rules for determining the competency of witnesses—Cal 125. The Act of 1868, authorizing accused persons to become witnesses in their own behalf, had no application to examinations before committing magistrates—43 Cal. 559, but this act has been abolished by this section of the Code—47 Id. 156, and if a person accused of crime voluntarily and freely offers himself as a witness at his preliminary examination, without undue influence, his testimony may be used in evidence against him on his trial—Id. The restriction upon the competency of a witness must be strictly construed in favor of life, liberty, and public justice—27 Cal. 638.

Witnesses, who competent—All persons who are disinterested and not infamous, are competent witnesses, and are presumed to be so until the contrary is shown—Eug. 742. The attorney who acted for a party but on the preliminary examination, but not retained at the trial is a competent witness—14 Gray, 402. A person deaf and dumb may testify by signs through an interpreter—8 Conn. 53. So, an informer is a competent witness—3 McLean, 53, 1d. 269. A juror is not incompetent as a witness in a proper case, but he cannot impeach his own verdict—48 Cal. 90, 53 Id. 42, 1 Halst. 244.

If a lunatic has such a share of understanding as enables him to remember the events, and has a knowledge of right and wrong, he is competent—25 Gratt. 863. If a child under the age of seven years has sufficient knowledge of the nature and circumstances of an oath, he may be a witness—2 Ala. 275, and this is to be determined by the court—Id., 2 Allen, 295, see 47 Ga. 524, 31 Ind. 90, 3 Brav. 339.

Where a boy nine years of age stated that he did not know the nature of an oath, he is not competent—6 Parker, 11125. Being under twenty years of age, of age 13, it was a proof of a boy's competency to testify at a trial for larceny—74 Cal. 44. The officer who arrested a prisoner is a competent witness—Trench v. C. I. 80, of a person who arrested the officer in the same case—3 Id. 284. A prisoner is a competent witness for the State—Wash. 7, but see 3 Penn. 45. A person from whom property has been stolen is a competent witness—3 Mass. 20; 1 N. H. & M. C. 81, but not when entitled to treble the value of the property stolen—4 N. H. 404.

A person convicted of an infamous crime is a competent witness before sentence—2 McLean, 323, 7 Fred. 225; and one convicted in another State is not, therefore incompetent—23 Ala. 44; 6 Gratt. 706.

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but see 3 Hawks, 395. In New York, a person convicted not competent to be a witness—1 Parker & R. 241, but convicted of petit larceny as a first offense, is not incompetent—17. In Massachusetts, a person convicted of larceny is to testify—8 Met. 531.

In general, a codefendant cannot be a witness until to be a party, by acquittal or entry of *nolle prosequi* or otherwise—10 Johns. 65, 15 Mo. 28, 16 id. 381, 39 N. H. charge must be at the trial before a defendant has been indicted by the court of its own motion or on application of the jury—49 Cal. 51. A codefendant on a separate trial may have his codefendant as a witness—9 N. Y. 38, 51 Ark. but one jointly indicted with another is competent—6 114, 1 Ga. 66, see 37 Mass. 422, 39 Cal. 570.

An accomplice should not be made a witness without the court, on appeal or showing that there is no other whom the offense can be proved—1 Iowa 316, 9 Cowen, 493, 4 Wash. C. C. 42. He may be a witness when a trial is had—10 Mo. 1 and he is not discharged from perjury by giving his evidence—11 Fla. 24, 80, the principal may give evidence against the accessory—2 Harv. 216. Where two are jointly indicted and one is not a competent witness for the conviction or acquittal—1 Doug. (Mich.) 45, 3 Wils. 63, 99. So, as to a wife on her separate trial—1 Wheel. C. statute a husband or wife may be compelled to testify against the other—43 Mo. 20, and see 61 N. C. 614.

A State may legislate as to the rules of evidence—240. That a state cannot be a witness against a witness not change the rules of evidence either as to admission or of proof necessary to convict—31 Cal. 53. The principle of witness is not admissible under the existing white persons—11 Cal. 100, the code this rule was changed. The fourteenth amendment of the Federal Constitution does not take away the power of the Legislature as to the exclusion of evidence in the State courts—40 Cal. 207, overruling 30 Cal. 63, 27 id. 628.

It is not a valid objection to a witness that his name is on the indictment—19 Cal. 426, 21 id. 348, 29 id. 502, but ground for postponement—81 Cal. 96. The competency does not affect by his name being on the indictment—3 McLean, 115, 1 Sw. 29, see 41 Cal. 2, 3 Grant 67. A party may show a witness is a witness by examining him on his *voir dire* or other testimony—816 29 Cal. 129. See Code of Civ. Proc.

Testimony of experts. There is no rule of law fixing amount of experience or degree of skill necessary to a competent—15 Mass. 62, see 14 Gray 335. Professional witnesses give testimony on questions of skill or science—1 Parker & R. 461, 4 Zab. 643, but their opinions as experts from books are not admissible in evidence—31 N. H. 44.

A medical or other professional witness cannot give evidence of a fact or profession—10 Johns. 515. An expert made a *post mortem* examination of the body of a person and testified that such a person died, and a copy of the report of her death—2 Mc. 36. An expert cannot to prove mere facts, but to establish facts—1 Cal. 41, 11 Cal. 22, facts are not the province of an expert. A party cannot testify to an opinion case as such portion of an expert who at least the whole evidence cannot give to the effect of such evidence—1 Wils. 178. Where an

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ference prejudicial to the veracity of witnesses can be drawn
the fact that they did not testify as to the committing magis-
trial 104 A witness cannot be impeached by proving that he
guilty of stealing - 1 McMill 494, 5 Gratt 664

Where the matter was collateral relating only to
of the witness the extent of cross-examination is such
the court found it is a matter for the jury to deter-
mine, or at least if it is to be shown that a
fact, does not relate to the case, it is a matter for
the jury to determine. The fact that a
had the opportunity of cross-examination is a
and the court is not to interfere with the jury's
decision unless it is so manifestly wrong that it
prejudicial to the case.

Permitting a cross-examiner to recall a witness to examine the... of the court... and...
use was that was already stated...
the... statement...
to...
for...

[illegible]

When a witness appears adverse in interest to the party, the propriety of asking questions is in the discretion of the court. *McCall, 411* An interrogatory by the plaintiff, *McCall, 411* The court faced with a witness whose testimony was adverse to the party, *McCall, 411*

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tions it may extend to his general moral character—10 Fred 40 5
Mo 526 411 50. Thirdly acts of misconduct on the part of a
witness cannot be shown by way of impeachment—22 Cal 361

The proper inquiry is what is his general character in the
where—ex 14 from witness' knowledge—McLean 20 34
100 Cal 566 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
4 W 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
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questioned what person's general character is the witness
witnessed—ex 14 53. It is not competent to prove that a
witness is connected from veracity—2 McLean 20 34
20 Cal 361, 67 Cal 361.

In Ohio the inquiry is restricted to the general character of
witness for truth and veracity—10 Ohio 28 60. In Indiana
inquiry is restricted to the moral character of the witness—
24 Ind 411. Credit of witness may be impeached although
ing witness cannot testify that person is a general character
witnessed and veracity—ex 14 53. If the general
ter of a witness is impeached, the jury are bound to disbelieve
whom of his testimony—in Ohio St 218.

Sustaining character of witness. Any inquiries into the char-
ter of a witness must be that as to evidence to establish
character—7 Cal 411 2 3. Where the circumstances
character of witness as to the truth of the charge—
and witness is not to fast the principal witness
may show by evidence which witness is not to fast
tion—N Y 10. As a general rule, it is not competent
to prove that the witness has made declarations of
port—2 W 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
Parker 10 11, 12 Fred 414, 10 Gray, 453, 24 Iowa, 5.

A person called to sustain the character of a witness must
that he will be proved under oath—2 W 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
never be called a character called in question—4 W 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
Grant 1 2 3, but a person cannot object to testify
oral witnesses—ex 14 53. As a general rule, it is not competent
8 Cal 14, 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
conviction of a witness is admissible to show that
tion of a witness is admissible in the community
50 Cal 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
generally of character of his own witness until it has been
50 Cal 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
may be called to testify in support of his character for
veracity—2 W 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

The credit of a witness cannot be sustained by proof that he
to—ex 14 53. In a witness the same as
a witness is not competent to prove by witness
of his own witness is not competent to prove by witness
regarding a witness in whether he is a witness
person has been convicted of a crime—ex 14 53
N Y 10. If a witness is called to testify in support
proof of a witness is admissible in the community
50 Cal 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Proof of conviction for felony is an assumption of character
witness is not competent to prove by witness
ex 14 53. In a witness the same as
ing well for his own witness is not competent to prove by witness
cross-examination on his own witness is not competent to prove by witness
peach his testimony, the court must sustain the witness
witness with the person at whose instance the affidavit was made

CHAPTER III.

COMPELLING THE ATTENDANCE OF WITNESSES.

- 1324. Subpoena defined, and who may issue.
- 1327. Form of subpoena.
- 1328. Subpoena, by whom and how served.
- 1329. Expenses of witness from without the county, or poor.
- 1330. Attendance of witness residing or served out of the county
- 1331. Disobedience to subpoena, etc.
- 1332. Failure to appear, undertaking forfeited.
- 1333. Temporary removal of imprisoned witnesses.

1325. The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by—

1. A magistrate before whom a complaint is laid, for witnesses in the State, either on behalf of the people or the defendant
2. The district attorney, for witnesses in the State, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.
3. The district attorney, for witnesses in the State, in support of an indictment or information, to appear before a court in which it is to be tried.

The clerk of the court in which an indictment or information is to be tried, and he must, at any time, upon application of the defendant, and without charge, issue any blank subpoenas, subscribed by him as clerk, for witnesses in the State, as the defendant may require.

[Effect April 9th, 1880.]

ss, procuring attendance—The issuing of an attachment for a witness on behalf of the prisoner, after arrangements for the case is in the discretion of the court. 15 N. Y. 549. A witness may be compelled to attend, and if he fails to do so, he may be imprisoned, and subject to the punishment of the law. On an attachment for getting a witness, it need not be proved that the testimony of the witness is material. 3 Bar (Del.) 562.

1327. A subpoena authorized by the last section must be substantially in the following form:

"The people of the State of California to A. B.:

"You are commanded to appear before C. D., a justice of the peace of — township, in — county, (or as the case may be) at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E. F.

"Given under my hand this — day of — A. D. eighteen —. G. H., justice of the peace," (or "J. K. district attorney," or "By order of the court, L. M. clerk," or as the case may be). If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

1328. A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally, and informing him of its contents.

1329. When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, or as a subpoena or in pursuance of an undertaking and it appears that he has come from a place outside of the county or that he is poor and unable to pay the expenses of his attendance, the court, at its discretion, if the attendance of the witness be upon a trial, by an order upon its minutes, or, in any other case, the judge, at his discretion, by a written order, may direct the county auditor to draw his warrant upon the county treasurer in favor of the witness for a reasonable sum, to be specified in the order for necessary expenses of the witness. [Approved March 1876.]

1330. No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides, or is served with the subpoena, unless the judge of the court in which the offense is triable, or a justice of the Supreme Court, or a judge of a Superior Court, upon an affidavit of the district attorney or prosecutor, or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpoena an order for the attendance of the witness. [In effect April 12th, 1880.]

1331. Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt. A witness disobeying subpoena issued on the part of the defendant, unless he show good cause for his non-attendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action.

Contempt—The refusal of a witness to testify, or to answer a proper question, is a contempt—1 Ind. 161.

1332. When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

1333 When the testimony of a material witness for the people is required in a criminal action, before a court of record of this State, and such witness is a prisoner in the State prison, or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by the judge thereof, and in case the prison or jail is out of the county in which application is made, such order shall only be made upon the affidavit of the district attorney, or other person, on behalf of the people, showing that the testimony is material and necessary, and even then the granting of such order shall be in the discretion of the court or judge. Such order shall be executed by the sheriff of the county

in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to safely keep him and when he is no longer required as a witness, to return him to the prison or jail whence he was taken; the expense of executing such order shall be paid by the court in which the order shall be made. [In effect April 1 1878.]

CHAPTER IV.

EXAMINATION OF WITNESSES CONDITIONALLY.

- § 1335. Witnesses examined conditionally for the defendant.
- § 1336. In what cases defendant may apply for the order.
- § 1337. Application, how made.
- § 1338. Application, to whom made.
- § 1339. Order, when granted and what to contain.
- § 1340. Examination in absence of district attorney.
- § 1341. If facts disproved, examination not to proceed.
- § 1342. Attendance of witness, how enforced.
- § 1343. Testimony, how taken and authenticated.
- § 1344. Deposition to be transmitted to clerk.
- § 1345. When may be read in evidence. Objections, etc.
- § 1346. Deposition of witness imprisoned in another county.

1335. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment or information, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise. [In effect April 9th, 1880.]

1336. When a material witness for the defendant is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

1337. The application must be made upon affidavit, stating--

1. The nature of the offense charged.
2. The state of the proceedings in the action.
3. The name and residence of the witness, and that his testimony is material to the defense of the action.
4. That the witness is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

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1338. The application may be made
a judge thereof, and must be made upon
to the district attorney. [In effect Marc
1339. If the court or judge
ination of the

1339. If the court or judge is satisfied that the witness is necessary, and made that the witness be examined at a specified time and place, and that a copy served on the district attorney, within a before that fixed for the examination.

1340. The order must direct to be taken before

1340. The order must direct that the examination be taken before a magistrate named therein, being furnished to such magistrate of service by a copy of the order, if no copy be on the part of the people, the examination to be taken by the district attorney on behalf of the people.

continued absence from the State. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

The proper practice is to take the testimony of the witnesses in writing, and return it to the District Court as required by statute—44 Cal 459.

Depositions in evidence.—Depositions are admissible in evidence—44 Cal 452. The deposition of a witness, given before the coroner's jury and certified and returned by the coroner as required by statute, is admissible for the purpose of contradicting the statement of the witness made under oath—44 Cal 459. It must set forth the actual compliance with all the requirements of the statute—8 Cal 559. If a magistrate, in taking a deposition, erroneously excludes a question asked of a witness, the error does no injury if the question asked was immaterial—50 Cal 139.

Depositions taken under section 869 are not admissible against a defendant under section 696 unless taken in the manner and form, and certified as required by section 869. If certified by a mere jurat, they are not admissible—54 Cal 575. Depositions cannot, in general, be used against the prisoner, nor in his favor, unless by his consent—7 Smedes & M. 475. Depositions taken before commitment, or otherwise than as specially provided by the Code, cannot be used against the defendant—8 Cal 203.

1346. When a material witness for a defendant, under a criminal charge, is a prisoner in the State prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of the Penal Code, commencing with section thirteen hundred and thirty-five, and ending with section thirteen hundred and forty-five, shall, so far as applicable, govern in the application for and in the taking and use of such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated, or in case the witness is confined in the State prison, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of directors of the State prison, whose duty it shall be to act without compensation. Every officer, before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth. [In effect April 5th, 1880.]

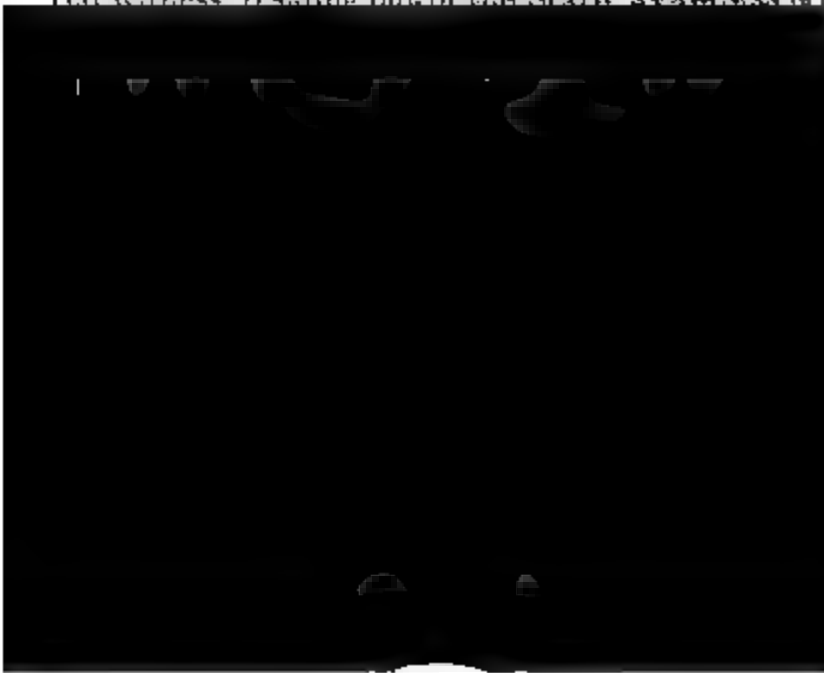
§§ 1349-52 EXAMINATION ON COMMISSION.

CHAPTER V.

EXAMINATION OF WITNESSES ON COMMISSION.

- § 1349. Examination of witness residing out of the State.
- § 1350. When defendant may apply for an order to examine.
- § 1351. Commission defined.
- § 1352. Application made on affidavit.
- § 1353. Application, to whom made.
- § 1354. Order for commission, when granted, stay of process.
- § 1355. Interrogations, how settled and allowed.
- § 1356. Direction as to the return of the commission.
- § 1357. Commission, how executed.
- § 1358. Returned commission, delivered to an agent.
- § 1359. Same.
- § 1360. When and how filed.
- § 1361. Commission and return, open for inspection. Copies.
- § 1362. Depositions to be read in evidence. Objections.

1349. When an issue of fact is joined upon an allegation or information, the defendant may have any real witness residing out of the State examined on



EXAMINATION ON COMMISSION. §§ 1353-6

The state of the proceedings in the action, and that the fact has been joined therein.

The name of the witness, and that his testimony is material to the defense of the action.

That the witness resides out of the State.

3. The application may be made to the court, or a judge thereof, and must be upon three days' notice to the district attorney [In effect March 12th, 1880]

4. If the court to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and the court may insert in the order a direction that the trial be stayed for a specified period reasonably sufficient for the execution and return of the commission. [In effect April 9th, 1880]

5. When the commission is ordered, the defendant must serve upon the district attorney, without delay a copy of the interrogatories to be annexed thereto, with three days' notice of the time at which they will be presented to the court or judge. The district attorney may in like manner serve upon the defendant or his counsel a copy of the interrogatories, to be annexed to the commission, with like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must indorse them with his allowance and annex them to the commission.

6. Unless the parties otherwise consent, by an instrument in writing upon the commission, the court or judge must insert thereon a direction as to the manner in which it is to be returned, and may in his discretion, direct that it be returned by mail or otherwise, addressed to the

§§ 1357-8 EXAMINATION ON COMMISSION.

clerk of the court in which the action is pending, designating his name and the place where his office is kept.

1357. The commissioner, unless otherwise specially directed, may execute the commission as follows

1. He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

2. He must cause the examination of the witness to be reduced to writing, and subscribed by him.

3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or alter it until it conforms to what he declares is the truth.

4. If the witness decline answering a question, the fact, with the reason assigned by him for declining, must be stated.

5. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner.

6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it under seal, and address it as directed by the indorsement thereon.

7. If there be a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post-office. If any other direction be made by the written consent of the parties, or by the court or judge, on the commission, as to its return, the commissioner must comply with the direction.

A copy of this section must be annexed to the commission. [Approved March 30th, in effect July 1st, 1874]

1358. If the commission and return be delivered to the commissioner to an agent, he must deliver the same

to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it. [In effect April 9th, 1880.]

1359 If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it, that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

1360. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

1361. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or of any part thereof, on payment of his fees.

1362 The depositions taken under the commission may be read in evidence by either party on the trial, upon being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to a question in the interrogatories or to an answer to the deposition, as if the witness had been examined orally in court.

The court may exercise discretion in admitting or rejecting a deposition taken out of the State—50 Me. 403, see 33 Cal. 123, ante, § 1343.

CHAPTER VI.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION

- § 1367. Insane person cannot be tried, or punished.
 § 1368. Doubts as to sanity of the defendant, how determined. See of proceedings on.
 § 1369. Trial of the question of insanity. Charge of the court.
 § 1370. Verdict of the jury as to sanity, and proceedings thereon.
 § 1371. If defendant is committed, it exonerates his bail, etc.
 § 1372. Defendant detained in asylum until he becomes sane.
 § 1373. Expense of sending, etc., defendant to asylum.

1367. A person cannot be tried, adjudged to punishment, or punished for a public offense, while he is insane.

Insanity. A person cannot be tried, adjudged, or punished for a public offense 31 Cal. 52. The criminal actor must have a sane mind, as an act does not make a man guilty unless he is guilty see Co. Litt. 247 b, 1 Russ. Cr. 4th ed. 6, 1 Hale 1 Bush. C. L. 6th ed. § 375, and an insane person cannot have a crime — 38 Ga. 507. Sanity is an essential ingredient in crime. A weakness of mind is not insanity 34 Cal. 570, 24 Ind. 231, 5 Ill. 354; 54 Ind. 538. Insanity is a disease which impairs or destroys either the understanding, or the will, or both 1 Day 1 24 24 Ill. Ga. 329 31 Ind. 42, Id. 485, 7 Met. 500, 53 Pa. St. 35, 6 Met., Ky. 125, sufficient to create an overwhelming impulse act 8 Bush. 365, Id. 464, 40 Conn. 16, 47 Ga. 53, 31 Ill. 57, Iowa 67, 2 Parker Cr. R. 43, 4 Pa. St. 261, see 7 Law Rep. 1 person may be insane in a degree not relieving from punishment for crime 39 Cal. 60, 1 C. 45, 39 Conn. 51; 13 Alb. 17, 8 Sel. Cr. 126, 1 Curt. 31, 11 L. 285, 10 Minn. 213 57 Me. 369, 4 Pa. St. 264, 1 Strob. 479. Moral insanity coexisting with insanity has no foundation in law, and will not furnish an excuse for punishment for crime — 47 Cal. 134; 24 Id. 230, 1 C. 45, 39 Conn. 51, 25 Ind. 507, 45 Ill. 186, 31 Ill. 421, 14 Gray 303 84 1 57, 5 Har. (Del.) 512, 8 Jones (N. C.) 463 6 Met. 121, 1 Mo. N. Y. 193, 52 Id. 467, 2 Ohio St. 54, 44 Mass. 506. Wright Cr. Cas. 13, 1 Zab. 146. Insanity produced by intoxication destroys responsibility, if the accused when sane voluntarily made himself drunk — 43 Cal. 352, 25 Id. 53. See Dexty's Crim. Law, § 22, ante, § 1616.

Test of insanity. — The true inquiry is, whether the defendant was capable of having and did have a criminal intent, and if the capacity to distinguish between right and wrong, as to the act charged — 47 Cal. 14, 24 Id. 230, 17 Ala. 464, 1 Curt. 1, 4 Hesk. 14, 30 Miss. 600, 21 Mo. 464, 32 N. Y. 719, 52 Id. 467, 10 Ohio St. 146, 70 Pa. St. 414, 1 Tex. Ct. App. 161, 61 607, see 34 Tex. 146. It is sufficient if shown to have existed in reference to the particular

57 Cal. 134; 24 Id. 230; 40 Conn. 136, 1 Curt. 8, 39 Conn. 591, 4 Denlo.
3 Ga. 313, 31 Id. 44, 42 Id. 9; 45 Id. 54, 13 Id. 280, 4 Greene.
Iowa, 500; 6 M. Loan, 111, 7 Met. 500, 57 Me. 574, 11 Gray, 303, 6 N. H.
20, 2 Barb. 566, 52 N. Y. 467, 4 Pa. St. 364, 78 Id. 122; 2 Parker (C. R.
11 B. & L. 148, 1 Zab. 136, Wright, 392, 2 Va. Cas. 133. See Desty's
Crim. Law, § 43b.

1368. When an action is called for trial, or at any time during the trial, or when the defendant is brought before the court for judgment on conviction, if a doubt arise as to the sanity of the defendant, the court must order the question of his sanity to be submitted to a jury, and the trial of the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity. [In effect April 9th, 1880.]

Proof of insanity. As often as any doubt of the sanity of the defendant arises in any proceedings may be had. 51 Cal. 52, 15 Id. 329. Counsel cannot waive a jury as to the question of the sanity of defendant, in order to enable the court to enter a judgment of acquittal where the jury is not present. 4 Cal. 21. No proof of insanity is required if during the proceedings a doubt arises. It is then the duty of the court of its own motion to suspend further prosecution until a question of sanity has been terminated. 42 Cal. 21. The burden of proof is on the prisoner—40 Cal. 455, 47 Id. 130, 20 Id. 519.

Insanity must be proved as a substantive fact by the party alleging it. 20 Cal. 54, 4 Cr. Ch. C. 54, 10 Cal. 11, 7 Gray, 543, 1 Zab. 103, 8 Jones, (N. C.) 463, 18 Prob. 479, 5 Ala. 241; 20 Gratt. 860, 19 Ohio St. 503; 21 Cal. 1st to be rationally established by satisfactory evidence—47 Cal. 386. The jury are to be governed by the preponderance of evidence, and not by a doubt as to its truth. It is not to be concluded by a reasonable doubt. 24 Cal. 230, 4 Id. 11, 41 488, 611 4 2, 5 Id. 129, 20 Id. 54, 7 Gray, 593, 7 Id. 506, 10 Ohio St. 128, 5 M. 544, 11 Gray, 303, 15 N. Y. 38, 35 Id. 125; 41 Cal. 147, 37 Pa. St. 205, 1611 4 4, 25 Ark. 394; 32 Iowa, 49, 6 Jones, (N. C.) 463, 10 Ohio St. 509, 31 Id. 111, see 1 Brewst. 350, 83 Pa. 131, 84 Id. 20.

It is not improper to caution the jury to be careful that no pretended case of insanity should be allowed to shield the defendant from the ordinary consequences of his act—45 Cal. 65?

1369. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity.
2. The counsel for the people may then open their case, and offer evidence in support thereof.
3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in fur-

§§ 1370-2 INSANITY OF DEFENDANT.

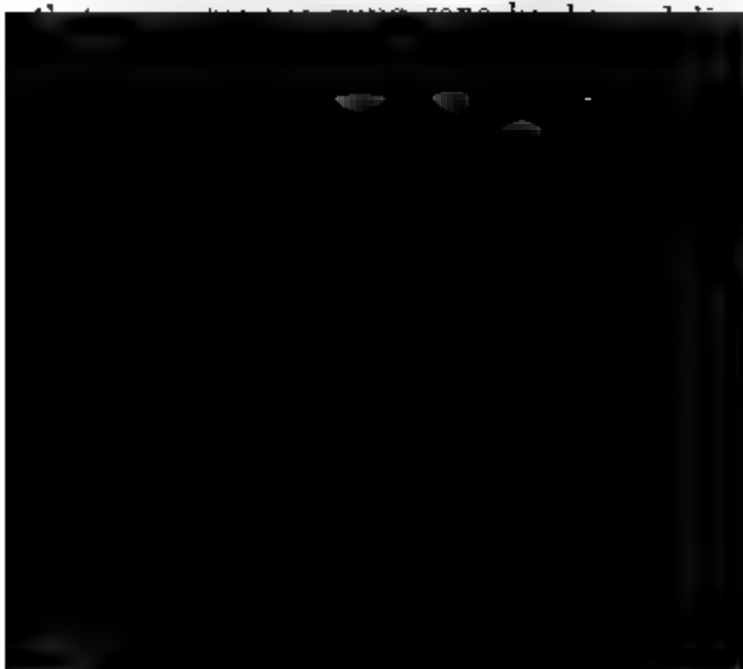
therance of justice, permit them to offer evid
their original cause.

4. When the evidence is concluded, unless
submitted to the jury on either or both sides
argument, the counsel for the people must com
the defendant or his counsel may conclude the
to the jury.

5. If the indictment be for an offense punis
death, two counsel on each side may argue t
the jury, in which case they must do so alter
other cases, the argument may be restricted t
sel on each side.

6. The court must then charge the jury, stat
all matters of law necessary for their info
giving their verdict.

1370. If the jury find the defendant san
must proceed, or judgment be pronounced, &
may be. If the jury find the defendant insar
or judgment must be suspended until he bec
and the court must order that he be in the
committed by the sheriff to the State insane a



1373. The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or information filed; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere. [In effect April 9th, 1880.]

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CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

- § 1377. Compromise of offenses for which civil action may be brought.
- § 1378. Compromise by permission of the court bars another prosecution.
- § 1379. No public offense to be compromised except.

1377. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the offense has a remedy by civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office.
2. Riotously.
3. With an intent to commit a felony.

Where an offense is a personal tort, and there is no attempt to suppress the prosecution, it may be compromised—50 Ga. 155. The taking of one's goods back again or receiving reparation is no offense—5 N. H. 553. Where money is paid for the purpose of reimbursing expenses, as, for search of stolen property—16 Ld. 94; 51 Ld. 24. If the purpose of settling the matter, there being no prosecution at the time, and no agreement not to prosecute, is not compounding the offense—9 Wis. 478.

1378. If the party injured appears before the court at which the depositions are required to be returned, at a time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom, but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

The consent of the court cannot make an agreement to stay prosecution valid, if it would be otherwise unlawful—1 Q. B. 218. O. 2 Lead. O. C. 218.

1379. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter.

There can be no compromise of a criminal charge where the party is arrested, or in any way held to answer—6 Oreg. 303, and neither an officer or a witness possesses the power to compromise a felony—1 Wyo. 277. An offense which, in the discretion of the court, may be punished by imprisonment in the penitentiary cannot be compromised—39 Ga. 85. See Desty's Crim. Law, §§ 10, 74 d.

CHAPTER VIII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

- § 1382. When action may be dismissed.
- § 1383. Continuance and discharge from custody.
- § 1384. If action dismissed, defendant to be discharged, etc.
- § 1385. Dismissed on motion of court or application of district attorney.
- § 1386. *Nolle prosequi* abolished.
- § 1387. Dismissal a bar in misdemeanor, but not in felony. 1388, 1389.

1382. The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

1. Where a person has been held to answer for a public offense, if an indictment is not found or an information filed against him, within thirty days thereafter.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within sixty days after the finding of the indictment, or filing of the information. [In effect April 9th, 1880.]

Dismissal. The dismissal is in the nature of a nonsuit—54 Cal. 413. Upon such dismissal the power of the court to resubmit ceases—54 Cal. 413, explaining 52 Id. 463. An application for dismissal must be made, in the first place, to the court where the prosecution is pending—54 Cal. 101. When the grand jury has dismissed a charge, the court may dismiss the action and discharge defendant from custody, and discharge the sureties from the bond, unless it has reason to believe the grand jury, at a succeeding term, may properly indict him—54 Cal. 413. See note, [941.

1363. If the defendant is not charged or tried as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the mean time may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued. [In effect April 9th, 1880.]

See 51 Cal. 413; *ante*, § 942.

1364. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him. See 51 Cal. 414.

1365. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Dismissal of action. - The discharge must be at the trial before the defendant goes into his defense, and by the court of its own motion, or at the request of the district attorney. 48 Cal. 110.

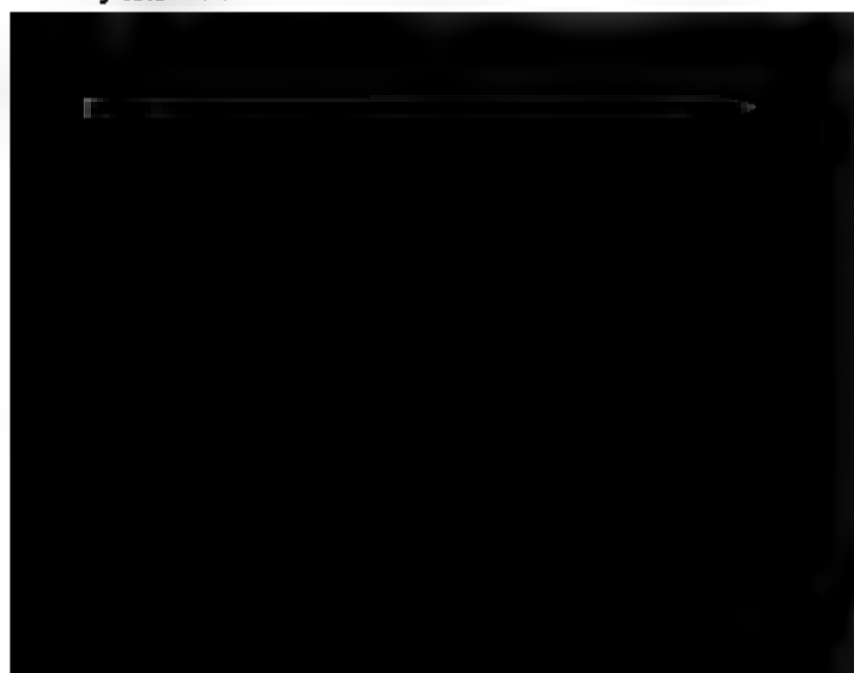
proceeding is pending there is a reasonable ground to believe that such minor may be reformed, and that a commitment to prison would work manifest injury in the premises. Such suspension may be for as long a period as the circumstances of the case may seem to warrant, and subject to the following further provisions: During the period of such suspension, or of any extension thereof, the court or judge may, under such limitations as may seem advisable, commit such minor to the custody of the officers or managers of any strictly non-sectarian charitable corporation conducted for the purpose of reclaiming criminal minors. Such corporation, by its officers or managers, may accept the custody of such minor for a period of two months (to be further extended by the court or judge should it be deemed advisable) and should said minor be found incorrigible and incapable of reformation, he may be returned before the court for final judgment for his misdemeanor. Such charitable corporation shall accept custody of said minor as aforesaid, upon the distinct agreement that it and its officers shall use all reasonable means to effect the reformation of such minor, and provide him with a home and instruction. No application for guardianship of such minor by any person, parent, or friend shall be entertained by any court during the period of such suspension and custody, save upon recommendation of the court before which the criminal proceedings are pending first obtained. Such court may further, in its discretion, direct the payment of the expenses of the maintenance of such minor during such period of two months, not to exceed, in the aggregate, the sum of \$25 (twenty-five dollars), which sum shall include board, clothing transportation, and all other expenses, to be paid by the county where such criminal proceeding is pending or direct action to be instituted for the recovery thereof out of the estate of said minor or from his parents. Such court may also revoke such order of suspension at any time. [Approved March 5th, 1882.]

1389. That no minors in the employ of any telephone company, special delivery company, or association, or any other corporation, or person or persons, engaged in the delivery of packages, letters, notes, messages or other matter, shall be assigned by such corporations, or persons or persons, to hire such minors to the keepers of houses, variety theaters, or other places of questionable reputation, or to other persons connected with such places of questionable reputation, nor to permit them to enter such places for illegal or questionable calling; that this law shall apply alike to managers, superintendents, and agents of such corporations, and to be enforced against them. [In effect March 15th, 1887.]

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

- § 1390. Summons upon information against corporation.
- § 1391. Form of summons.
- § 1392. When and how served.



answer a charge made against you upon the information of A. B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally). "Dated at the city (or township) of —, this — day of —, eighteen — "G. H. Justice of the Peace," (or as the case may be)

1392. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation or to the secretary, cashier, or managing agent thereof

1393. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as case proceedings are applicable

1394. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate as prescribed in section 1883.

1395. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed, or the district attorney file an information thereon, as in case of a natural person held to answer. [In effect April 9th, 1880.]

1396. If an indictment is found, or information filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases. [In effect April 9th, 1880.]

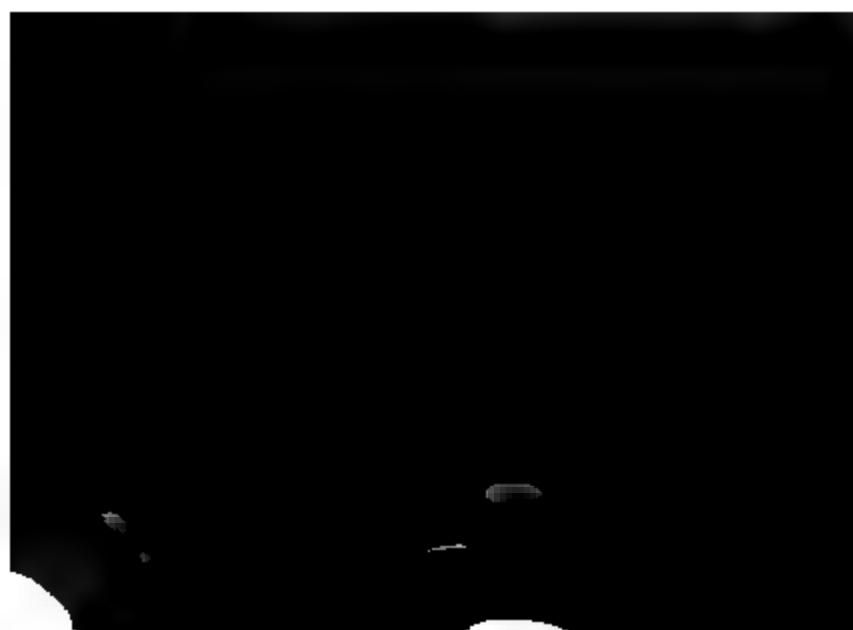
1397. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER X.

ENTITLING AFFIDAVITS.

§ 1401. Affidavits defectively entitled, valid.

1401. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment or information, or upon an appeal; but if it is without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled. It intelligibly refer to the proceeding, indictment, information, or appeal in which it is made. [In effect April 1890.]



CHAPTER XI.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

§ 1404. When not material.

1404. Neither a departure from the form or mode prescribed by this Code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

Errors in pleadings.—An error must actually prejudice the defendant—44 Cal. 542; see 49 id. 390. A failure to read the indictment, and to state defendant's plea, is not a fatal error—50 Cal. 494. Technical errors or defects are disregarded on appeals—53 Cal. 494.

CHAPTER XII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

- § 1407.** Peace officer must hold property subject to the order of magistrate.
- § 1408.** Order for its delivery to owner.
- § 1409.** Magistrate must deliver it to owner.
- § 1410.** Court in which trial is had may order its delivery.
- § 1411.** Delivered to county treasurer if not claimed in six months.
- § 1412.** Receipt for money, etc., taken from person arrested.
- § 1413.** Record of property alleged to be stolen.

1407. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

1408. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person



DISPOSAL OF PROPERTY STOLEN. §§ 1412-13

conviction of a person for stealing or embezzling it, magistrate or other officer having it in custody must, on payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury.

12. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent. When property is taken by a police officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one, with the property, at once to the mayor or other person in charge of the police office in such city or town.

13. The clerk in, or person having charge of, the police office in any incorporated city or town, must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS, AND PARDONS.

- § 1417. Governor may grant reprieves, commutations, and pardons.
 § 1418. His power in respect to convictions for treason.
 § 1419. To communicate to the Legislature reprieves, commutations, and pardons.
 § 1420. Report of case, how and from whom required.
 § 1421. Notice to district attorney of application for pardon.
 § 1422. Publication of notice.
 § 1423. When two preceding sections are not applicable.

1417. The governor has power to grant reprieves, commutations, and pardons after conviction, for offenses, except treason and cases of impeachment, subject to such conditions and with such restrictions and limitations as he may think proper, subject to the regulations provided in this chapter.

Pardoning power.—The pardoning power, whether exercised under the Federal or State Constitution, is the same in its effect as that exercised by the representatives of the English monarch in this country in the colonial times—43 Cal. 439. See Fed. Const. art. II, § 2, cl. 1; Const. of Cal. art. VII, § 1. A pardon is an act from the power intrusted with the execution of the laws, exempting from punishment which the law inflicts—43 Cal. 439, 7 Peters, 160. The word "pardon" must be construed with reference to its meaning at the time of the adoption of the Constitution—7 Peters, 160, 18 Peters, 364, 8 U.S. 5, 17 How. 450, 19 Id. 316, 1 At. 181, 150. It is construed like a grant, most favorably to the grantor—Ark. 284, 1 Strch. 160. The power to pardon extends to all pardons known to the law as such, either general, special, conditional or absolute—18 How. 314; 4 Wash. 380.

Where the condition of a pardon is that defendant shall leave the State, and he either does not leave, or, having left, returns, the original sentence revives, and may be enforced—8 Watts & S. 347; 1 Parker Cr. R. 47, 19 How. 307, but if the time for departure specified in the pardon, it does not begin to run during the disability—2 Calmes, 5. A pardon with a condition does not operate until the condition is performed—8 Watts & S. 347. A governor may pardon as well before as after trial—7 Watts & S. 372, 46 Id. 357, or, may grant a conditional pardon—4 B. 197; 1 Bail. 283, 2 Id. 51, 1 Parker Cr. R. 4; 18 How. 316. A governor may pardon after the prisoner has suffered the punishment for his crime—43 Cal. 439.

His power to reprieve does not depend on his constitution. To pardon, the designation of the time for execution was necessary.

sentence—17 N. H. 545. A pardon is a release of all fines or imprisonment for the offense—28 Pa. St. 267, 2 Phila. 256, but not of costs—Whart. 440, 48 Pa. St. 446; 43 Id. 53; and of such fines and penalties were payable to the State—311 Id. 126, but the pardoning power can decree a repayment of a fine—3 Dutch 63, and without words of mitigation, it does not restore forfeited estates—3 Grant Cas. 158. It remits a forfeited recognizance after judgment—3 Watts, 142.

The pardoning power is lodged in the executive—13 Wall 123; 8 Pickf. 229; 1 Abb. U. S. 116, 1 Nott. & McC. 26, 1 Mason, 431, 3 Opin. Gen. 622. Delivery is essential to give effect to a pardon—3 Ben. 41 Pa. St. 210, 7 Peters, 150, 8 Blindef 89. Until delivery, a pardon, though signed and sealed, may be recalled and cancelled by the executive or his successor in office—3 Ben. 397. A pardon must be proved by the production of the warrant itself, or its loss must be accounted for—6 Watts 338, 1 Grant Cas. 329. It removes the disability to testify—43 Cal. 439. See as to its effect—20 Wall. 468, 16 Id. 151, 42 Id. 154, 1d 128, 1d 156, 9 Id. 531; 2 Abb. U. S. 148. A pardon obtained by fraud is void, and may be revoked before actual delivery—3 Ben. 397, 43 Pa. St. 53.

1418. He may suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the Legislature at its next meeting, when the Legislature may either pardon, direct the execution of the sentence, or grant a further reprieve; provided, that neither the governor nor the Legislature shall have power to grant pardons or commutations of sentence in any case where the convict has been twice convicted of felony, prior to the first day of January, eighteen hundred and eighty, unless upon the written recommendation of a majority of the judges of the Supreme Court. [In effect February 18th, 1880.]

1419. He must, at the beginning of every session, communicate to the Legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, and the reasons for granting the same. [In effect February 18th, 1880.]

1420. When an application is made to the governor for a pardon, he may require the judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on

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the trial, and of any other facts having reference to propriety of granting or refusing the pardon.

1421. At least ten days before the governor acts on an application for pardon, written notice of the intent to apply therefor, signed by the person applying, must be served upon the district attorney of the county where the conviction was had, and proof, by affidavit, of service must be presented to the governor.

1422. Unless dispensed with by the governor, a copy of the notice must also be published for thirty days before the first publication, in a paper in the county in which the conviction was had.

1423. The provisions of the two preceding sections shall not be applicable—

1. When there is imminent danger of the death of a person convicted or imprisoned.

2. When the term of imprisonment of the applicant has expired within ten days of its expiration.



TITLE XI.

**f Proceedings in Justices' and Police Courts
and Appeals to Superior Courts.**

**CHAP. I. PROCEEDINGS IN JUSTICES' AND POLICE
COURTS, §§ 1426-61.**

II. APPEALS TO SUPERIOR COURTS, §§ 1466-70.

JUSTICES' AND POLICE COURTS.

■

CHAPTER I.

PROCEEDINGS IN JUSTICES' AND POLICE COURTS.

- § 1426. Proceedings must be commenced by complaint.
- § 1427. When warrant of arrest must issue. Form of warrant.
- § 1428. Minutes, how kept.
- § 1429. The plea, and how put in.
- § 1430. Issue, how tried.
- § 1431. Change of venue, when granted.
- § 1432. Proceedings on change of venue.
- § 1433. Postponement of the trial.
- § 1434. Defendant to be present.
- § 1435. Jury trial, how waived.
- § 1436. Challenges.
- § 1437. Oath of jurors.
- § 1438. Trial, how conducted.
- § 1439. Court to decide questions of law, but not of fact.
- § 1440. Jury may decide in court, or retire.
- § 1441. Verdict of jury, how delivered and entered.
- § 1442. Verdict, when several defendants are tried together.
- § 1443. Jury, when to be discharged without a verdict.

1426. All proceedings and actions before a Justices' or Police Court, for a public offense of which such courts have jurisdiction must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

Proceedings, how commenced.—The addition "Jr" need not be inserted in the complaint—54 Cal. 409; see 55 Cal. 228, 45 id. 209. The Penal Code works the same change in criminal actions which has been wrought by the Code of Civil Procedure in civil actions—27 Cal. 57; and see 34 id. 191.

1427 If the justice of the peace, or police justice, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

"COUNTY OF —.

The People of the State of California to any sheriff, constable, marshal, or policeman in this State:

"Complaint upon oath having been this day made before me —, (justice of the peace or police justice, as the case may be) by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith, (naming the place).

"Witness my hand and seal at —, this — day of —, A. D. —. A. B."

Warrant.—Where the justice who issued the warrant is absent or unable to act, the party arrested may be taken before some other justice in the same county for examination, etc.—19 Cal. 133. A party may be arrested without a warrant—27 Cal. 572.

1428. A docket must be kept by the justice of the peace, or police justice, or by the clerk of the courts held by them, if there is one, in which must be entered each action, and the proceedings of the court therein.

See 55 Cal. 228, 19 id. 133.

1429. The defendant may make the same plea as upon indictment, as provided in section ten hundred and

sixteen. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any information which may be filed by the district attorney. [In effect April 9th, 1880.]

See *ante*, § 1016, and note.

1430. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case. [In effect February 25th, 1880.]

1431. If the action or proceeding is in a Justice's Court, a change of the place of trial may be had at any time before the trial commences—

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe that he



a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

1433. Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

See *ante*, § 1052, note.

1434. The defendant must be personally present before the trial can proceed.

Presence of defendant. The plea of "not guilty" may be entered in the absence of defendant—4 Cal. 238, see *ante*, § 1052.

1435. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in chapter one, title three, part one, of the Code of Civil Procedure. [In effect February 25th, 1880.]

1436. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the court.

Challenges.—See *ante*, §§ 1078-85, grounds of challenge—see *ante*, § 1055-88.

1437. The court must administer to the jury the following oath: "You do swear that you will well and truly try this issue between the People of the State of California and A. B., the defendant, and a true verdict render according to the evidence."

1438. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

1439. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

—*ante*, §§ 11-4-27

1440. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place, that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

See ante, § 1128.

1441. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter, or cause it to be entered, in the minutes.

See ante, § 1151.

1442. When several defendants are tried together & the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly; and the case as to the rest may be tried by another jury.

See ante, § 1151.

6. A judgment that the defendant pay a fine, may direct that he be imprisoned until the fine be satisfied in the proportion of one day's imprisonment for every dollar of the fine. [Approved March 7th, 1874.]

7. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with two or more sureties, to pay the same within thirty days after the trial.

8. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

9. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days or less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear at judgment. [Approved March 30th, in effect July 1st, 1874.]

10. At any time before judgment, defendant may demand a new trial or in arrest of judgment.

Sec. 1182.

1. A new trial may be granted in the following cases:

When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with knowledge that a trial is being had.

When the jury has received any evidence out of

3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

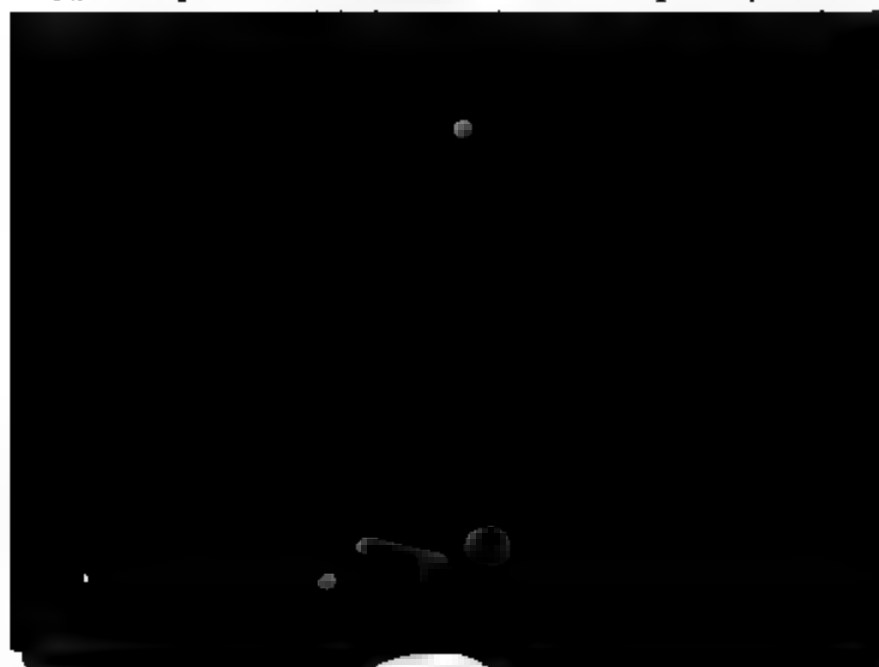
5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground the defendant must produce at the hearing the affidavits of the witnesses by whom such newly-discovered evidence is expected to be given.

See ante, §§ 1179-82.

1452. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the et



shall, or other officer, which is a sufficient warrant for execution.

56. When a judgment is entered imposing a fine, or requiring the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

Comment.—A judgment that defendant be fined three hundred dollars, and that in default of payment he be imprisoned in the county jail for exceeding three hundred days, is a substantial compliance with section 1205 of this Code—54 Cal. 205.

57. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county or city treasurer, according as the offense is prosecuted in a justice's or police court. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this section.

Comment.—Section 1570, *post*, are to be construed together—45 Cal. 16.

58. The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this Code relative to bail are applicable to bail in justices, or Police Courts.

Comment.—§§ 822-29, 1268-1317.

59. The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses, as provided in section thirteen hundred and forty-six, and punish disobedience thereof, as provided in section one thousand three hundred and thirty-one.

60. The provisions of section one thousand four hundred and one, in respect to entitling affidavits, are applicable to proceedings in the courts mentioned in this chapter.

61. The term "Police Courts," as used in this and the succeeding chapter, includes Police Judges' Courts, Municipal Courts, and all courts held by mayors or recorders in incorporated cities or towns.

CHAPTER II.

APPEALS TO SUPERIOR COURTS.

- § 1466. Appeals, when allowed.
- § 1467. Appeals, how taken, heard, and determined.
- § 1468. Statement on appeal.
- § 1469. If new trial granted, in what court had.
- § 1470. Proceedings, if appeal is dismissed or judgment affirmed.

1466. Either party may appeal to the Superior Court of the county from a judgment of a Justice's or Police Court, in like cases and for like cause as appeals may be taken to the Supreme Court. [In effect April 12th, 1880.]

See 26 Cal. 635.

1467. The appeal is taken, heard, and determined as provided in title nine, part two, of this Code.

See *ante*, §§ 1235-63.

1468. The appeal to the Superior Court from the judgment of a Justice's or Police Court is heard upon a statement of the case settled by the justice or police judge embodying such rulings of the court as are excepted, in which statement must be filed with and settled by the court within ten days after filing notice of appeal. [In effect April 12th, 1880.]

See 26 Cal. 635.

1469. If a new trial is granted upon appeal, it must be had in the Superior Court. [In effect April 12th, 1880.]

See 26 Cal. 635.

1470. If the appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the court below, which may proceed to enforce its sentence.

Jurisdiction.—The Superior Court has jurisdiction on habeas corpus to issue any and all process necessary to the execution of its judgments as over a person arrested on a bench-warrant after affirmance of judgment—54 Cal. 345; see Const. Cal. art. 6, § 5.

TITLE XII.

Special Proceedings of a Criminal Nature.

- P. I. OF THE WRIT OF HABEAS CORPUS, §§ 1473-1505.**
- II. OF CORONERS' INQUESTS AND DUTIES OF CORONERS, §§ 1510-19.**
- III. OF SEARCH-WARRANTS, §§ 1523-42.**
- IV. PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE, §§ 1547-58.**
- V. MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE, §§ 1562-4.**

CHAPTER I

OF THE WRIT OF HABEAS CORPUS.

- § 1473. Who may prosecute writ.
- § 1474. Application for, how made.
- § 1475. By whom issued, and before whom returnable.
- § 1476. Writ must be granted without delay.
- § 1477. Writ, what to contain.
- § 1478. How served.
- § 1479. Proceedings upon disobedience to the writ.
- § 1480. Return, what to contain.
- § 1481. Body must be produced, when.
- § 1482. Hearing without production of the body.
- § 1483. Hearing on return.
- § 1484. Proceedings on the hearing.
- § 1485. When court may discharge the party.
- § 1486. When to remand party.
- § 1487. Grounds of discharge in certain cases.
- § 1488. Not to be discharged for defect of form in warrant.
- § 1489. Proceedings on defective warrant.
- § 1490. Writ for purposes of bail

such imprisonment or restraint. [Approved March 2d, in effect July 1st, 1874]

Who may prosecute. A prisoner is entitled to a writ of habeas corpus as a matter of right, except when he has admitted or detained under final judgment. 16 Barb 36. It may be employed to effect release of a prisoner without a parole, as in *Ex parte Barker*, 11 R. 139. A writ of habeas corpus is *not* a writ of *habeas corpus* by which to bring up a person charged with a crime upon a writ of *habeas corpus* to a court to show up the state of the charges and to vent 5 Cowen 116. It is not a proper remedy for a person imprisoned under an irregular writ, but it is a remedy by motion and affidavit. 4 Johns 31. See also *Ex parte* 33, 34.

Persons out on bail are not entitled to this writ directed to their bail. *McClure*. The writ of habeas corpus may, by a writ of habeas corpus, be directed to the court which took a prisoner from custody of the latter. *Ex parte* 33, 34. It can be directed as a writ of habeas corpus to the court of the state, and of officers 33, 34. The governor of a state is not vested with the power of suspending the writ of habeas corpus, but giving him power to suspend the writ of habeas corpus. The privilege of suspending the writ of habeas corpus is exclusively to Congress. 1 A. 1. U. S. 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Writ when it lies.—The writ of habeas corpus may be appealed to the purpose of setting the state of bail where there is probable cause against the party. 2 Ala 31, 32 Cal 2, 2 Ashm 27, id 24, 3 Nev 80, 5 Cal 60, 10 Cal 28, 11 Cal 28, 12 Cal 28, 13 Cal 28, 14 Cal 28, 15 Cal 28, 16 Cal 28, 17 Cal 28, 18 Cal 28, 19 Cal 28, 20 Cal 28, 21 Cal 28, 22 Cal 28, 23 Cal 28, 24 Cal 28, 25 Cal 28, 26 Cal 28, 27 Cal 28, 28 Cal 28, 29 Cal 28, 30 Cal 28, 31 Cal 28, 32 Cal 28, 33 Cal 28, 34 Cal 28, 35 Cal 28, 36 Cal 28, 37 Cal 28, 38 Cal 28, 39 Cal 28, 40 Cal 28, 41 Cal 28, 42 Cal 28, 43 Cal 28, 44 Cal 28, 45 Cal 28, 46 Cal 28, 47 Cal 28, 48 Cal 28, 49 Cal 28, 50 Cal 28, 51 Cal 28, 52 Cal 28, 53 Cal 28, 54 Cal 28, 55 Cal 28, 56 Cal 28, 57 Cal 28, 58 Cal 28, 59 Cal 28, 60 Cal 28, 61 Cal 28, 62 Cal 28, 63 Cal 28, 64 Cal 28, 65 Cal 28, 66 Cal 28, 67 Cal 28, 68 Cal 28, 69 Cal 28, 70 Cal 28, 71 Cal 28, 72 Cal 28, 73 Cal 28, 74 Cal 28, 75 Cal 28, 76 Cal 28, 77 Cal 28, 78 Cal 28, 79 Cal 28, 80 Cal 28, 81 Cal 28, 82 Cal 28, 83 Cal 28, 84 Cal 28, 85 Cal 28, 86 Cal 28, 87 Cal 28, 88 Cal 28, 89 Cal 28, 90 Cal 28, 91 Cal 28, 92 Cal 28, 93 Cal 28, 94 Cal 28, 95 Cal 28, 96 Cal 28, 97 Cal 28, 98 Cal 28, 99 Cal 28, 100 Cal 28.

A regular demand under the act of Congress, and warrant of the superior to surrender a fugitive, cannot be inquired into on habeas corpus. 4 Har 57. The question whether the jury was properly or illegally discharged because of inability to agree cannot be inquired into on habeas corpus. 41 Cal 29. The writ cannot be used by a court for the purpose of revising arrests under Federal process. 1 How 306, 13 Wall 297, 1 Aub 1, 8 140, 31 Ala 474, 9 Johns 239, 1 Mich 298, 5 Nev 154, 27 N. J. L. 409, 25 Wis 200, 11 Blatchf 79.

1474 Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify—

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty; the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known.

ation of the party making the application.

Application, how made.—The writ will not be granted cause is shown—7 Cush. 285, or if fugitive—& R. 353, 20 Ala. 89, 11 Bish. 629, 26 Pa. St. 9, 10 M. see 18 Wall. 163. An affidavit that affiant is unable to be sufficient to entitle him to a writ of habeas corpus on allegation—1 Smedes & M. 149. The petition shall which the charge of illegal restraint rests—8 Kan. 1d. 8, see 1 Smedes & M. 149, 1 Cranch C. C. 159; 52 Id. 311, verified by affidavit or attested by witness—44 Ala. 17, Dudley, 46, 4 Cranch C. C. 75. The writ made by any relative or appropriate friend—3 Ben. Pick. 227, 10 Id. 274, 137 Mass. 154, 42 Iowa, 500, stranger—2 McAr. 683, 1 Cush. 355. Where it appears that the petitioner was in custody under a commitment after felony, the writ was refused—40 Tex. 451. Where that the petitioner, if brought before the court charged, the writ will not be granted—7 Cush. 285.

The doctrine of res adjudicata does not apply to habeas corpus—28 Cal. 247, 2 W. 424. The decision of a judge refusing to discharge on habeas corpus is not application before another court or judge—15 Cal. 2.

By whom issued. The judiciary have jurisdiction in cases where a party is arrested as a fugitive from State—5 Cal. 208, see *post*, § 1548. State courts and the right to release a prisoner on habeas corpus, whether of the authorities of the United States, pursued by a federal tribunal having jurisdiction—40 Cal. 16. State court will not intervene in extradition cases where is a foreign sovereign—59 N. Y. 110, 50 N. Y. 321; 40 301, 10 Serg. & R. 125.

To deprive State courts of jurisdiction on habeas corpus in State territory ceded to the United States, such have been expressly surrendered by the State. A person is unlawfully held under a judgment of a State court will examine the record, and upon a writ discharge him—18 Wall. 163; but a State court of habeas corpus to a person committed under a Charit. 142.

1475. The writ of habeas corpus may be granted—

1. By the Supreme Court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this State. When so issued it may be made returnable before the court, or any justice thereof, or before any Superior Court, or any judge thereof.

2. By the Superior Courts, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty, in their respective counties. [In effect February 18th, 1880.]

1476. Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay.

1477. The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court or judge before whom the writ is returnable, at a time and place therein specified.

1478. If the writ is directed to the sheriff or other ministerial officer of the court out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person, it must be delivered to the sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside thereof of his dwelling-house or of the place where the party is confined or under restraint.

How served. The writ must be directed to the person having custody—7 Ind. 611; 3 Wis. 1, 33 How. Pr. 402; on whom it is to be served personally—2 South. 645; unless service is waived by acceptance, &c.

press or implied—60 Ill. 390, and due notice to be given to the executing officer having jurisdiction of the offense—3 McLean, 293, 14 Wend. 44. Where the writ was issued in open court to the relator, who was present with and had the custody of the prisoner, the failure to ask for the writ for the purpose of return, was an acceptance of service and waiver of its denial—60 Ill. 390. Where a person in prison under sentence of trial on another charge, the writ should be issued, directed to the keeper of the prison, stating the object for which he is commanding the keeper to produce him in court—38 Cal.

1479. If the person to whom the writ is directed refuses, after service, to obey the same, the court upon affidavit, must issue an attachment against such person, directed to the sheriff or coroner, commanding him forthwith to apprehend such person, and bring him immediately before such court or judge; and if he is so brought, he must be committed to the jail of such court until he makes due return to such writ, or is legally discharged.

Disobedience of writ.—Where there is a delay in obeying the writ, an attachment will be granted to enforce obedience to the service of the writ—3 Cliff. 89, 60 Ill. 390, 18 Johns. 132; 44 Pa. 616; 59 Pa. St. 423; 2 South, 643.

1480. The person upon whom the writ is served must state in his return, plainly and unequivocally,

1. Whether he has or has not the party in his custody or under his power or restraint.

2. If he has the party in his custody or power or under his restraint, he must state the authority and cause of such imprisonment or restraint.

3. If the party is detained by virtue of any warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced to the court or judge on the hearing of the writ.

4. If the person upon whom the writ is served has the party in his power or custody, or under his restraint at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place.

3. The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

Return of writ.—The sickness of the party must be specially recited and verified by the affidavit of a medical attendant or nurse—2 Cor. 269. A copy of the commitment, if not filed with the petition, must be produced—2 Mass. 541. The cause of detention must be recited—12 Wis. 51, and facts justifying it must be set forth—4 Johns. 22; Maine & S. 226. The material facts of the return which are not relied by the prisoner must be taken as true—1 Pars. Cr. R. 129.

A rule to appear upon a habeas corpus cannot be taken before the return day, though the writ is actually returned before that time—8 Wren 31. If the warden of the prison has not a certified copy of the commitment the court or judge will give a reasonable time to procure it, and, if obtained, will quash the writ—23 Cal. 247.

1481. The person to whom the writ is directed, if it is served, must bring the body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next section.

1482. When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit. If the court or judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Non-production of body.—The excuse for non-production of the body must be direct and not evasive, as, that the party has not the body in his possession, custody, or power—5 Cranch C. C. 622, 10 Wm. 324, and when it is explained and is not impugned, the writ should be granted—1 Brewst. 341, 3 id. 545, see McCahon, 152.

1483. The court or judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

Hearing on return.—Where a court of record has jurisdiction, its action cannot be reviewed on habeas corpus, no matter how gross may

—13 Abb. Pr. 48; 3 Hill, 121; 1 R. 30. Where the court transcends the statutory limits of its jurisdiction—1 N. S. 38; 21 La. An. 19; 21 Tex. 388.

The writ of habeas corpus is not given for the reviewing judgments or orders—51 Cal. 376, 35 id. 100, so holding an accused person to answer a criminal charge was erroneously entered, is not reviewable on habeas corpus. The inquiry cannot go behind the sentence of a competent jurisdiction—3 McLean, 89; 2 Gratt. 588, 3 Parker not the province of the writ to review errors or omissions before it, but only to ascertain whether there is to pronounce the sentence of commitment, and what the commitment was in due form—31 Cal. 615, 35 id. 161, 1 Barb. Parker Cr. R. 9, 5 Hill, 167; 7 Abb. Pr. 98. If the commitment is assailed be one of competent jurisdiction, will be whether the judgment, as rendered, is, on its face, definite in terms—43 Cal. 457; and this rule applies to police court—43 Cal. 457; 47 id. 128.

The averments of a sentence of conviction cannot be a writ of habeas corpus unless impeachable for fraud or want of jurisdiction—43 Cal. 455, 49 id. 160, 93 U. S. 544, Allen, 191; 2 Gratt. 588, 45 Ala. 15, 51 id. 34, 1 Hill, 167, id. 414, 4 Parker Cr. R. 9, 9 Serg. & E. 71; 25 Ohio St. 44 Mo. 181, 40 Tex. 451.

A State court may determine whether the Federal court has jurisdiction—42 Barb. 479, Bright, N. P. 4; id. 263; 7 Cush. 235, 3 G. 447; 12 N. H. 194, 24 Pick. 227, 7 Pa. St. 336, 6 Ohio 100, Barb. 106, 45 id. 143, 24 How. Pr. 247, 15 id. 149, compare id. 259, 45 How. Pr. 244, but see 107 Mass. 172, 18 Iowa 505, 11 Blatchf. 79. That it is the duty of the Federal court to resist such process—21 How. 506, 13 Wa. 107, 5 McLean, yet the writ may issue from a Federal court to relieve arrest by State court process, when it is alleged violation of the United States—1 A. D. U. S. 140, 2 id. 521, 2 Woodr. 428; 7 Am. Law Reg. 60; see 3 Dill 571; but it is otherwise where the matter relates solely to jurisdiction—3 How. 103; 5 McLean, 174, 1 Gall. 1.

Where a court of record has jurisdiction, its acts are not laterally impeached, except for fraud—41 Cal. 521, 129; 88 Mass. 627; 27 Mich. 1; 30 id. 226, 5 Barb. 106.

to inquire into the legality of his detention—(1 Sand. 701.
Inquiry is, whether the warrant on which he is arrested re-
lates to a crime which has been demanded by the executive of the State from
the federal government, and that a copy of the indictment,
admitted to have been committed crime, certified as
true, has been presented. J. W. C. J. -12-

the return states that the prisoner is detained by virtue of the validity and existence of the process are the only facts to be investigated. The sufficiency of the evidence on which it cannot be inquired into—4 Har. 31. Formerly the Supreme could exercise its appellate jurisdiction by means of the writ—6; in cases of contempt as well as others—7 id. 281, &c. Under constitution as amended, the jurisdiction is original—25 id. 26. The writ, the constitutionality of the law authorizing it will not be considered—47 Mo. 164.

2. The party brought before the court or judge, on return of the writ, may deny or controvert any of the facts or matters set forth in the return, or except the sufficiency thereof, or allege any fact to show either that imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or judge must soon proceed in a summary way to hear such proof to be produced against such imprisonment or detention in favor of the same, and to dispose of such party if justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to perform all other acts and things necessary to a fair hearing and determination of the case.

5. If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such judge must discharge such party from the custody and restraint under which he is held.

large of party - If the arrest be a valid process, the relator be discharged. 1 Burr. 114; 1 Dalt. 245, 2 Vt. Cas. 504, as the warrants had legal effect. 20, 30 M. 218, 1400, 522. Where a prisoner shows that he is not guilty of the crime charged against him without a jury trial, the Supreme Court ruled 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824,

When a prisoner is brought before a judge, he may inquire into the nature of the trial and why he was convicted, and if he finds that he had no jurisdiction, he is returned to his own charge.

It appears from the return of the writ that the prisoner is not under process of any State court, judge, or officer thereof.

173. When the process is returnable, a writ of habeas corpus will not be granted, supposing the identity of the person and the genuineness of the record be established—4 McLean, 211, 3 Hughes, 264, 56 N. Y. 18, 5, How. 122 Mass. 324, 9 Wend. 212, 32 N. J. L. 141, 4 Har. 6.

Where females are brought before a court on a writ of habeas corpus, and the person in whose custody they are is not the owner, they will be discharged.

Where there are two grounds of detention, one bad, the court may discharge the prisoner as to the good ground, and remand him as to the other—3 Wend. 473. If after judgment the prisoner is later rearrested, he should be discharged on habeas corpus—2 Brewst. 345; 1 R. R. 364, 4 Tex. 579.

A person committed upon an indictment for murder, charged upon habeas corpus by proving his innocence, is entitled to a trial—1 H. & C. 377, 5 Parker & R. 77.

After judgment reversed in the Supreme Court, the County Court may order the prisoner brought back on habeas corpus—46 Cal. 11. An officer discharging a prisoner from custody is guilty of a misdemeanor, unless he have no jurisdiction, otherwise the order may be quashed—7 R. 1, 301.

The refusal of the lower court, after the prisoner has been sentenced and sent to the State prison, to order him brought back on habeas corpus for a new trial on reversal of the judgment, is not a ground for his discharge from custody on habeas corpus—46 Cal. 11. The discharge of the prisoner is a protection to him in custody, although the discharge was erroneous—Barb. 37. A discharge is no bar to subsequent prosecution for the same offense—56 N. Y. 182, 1 La. An. 413; 47 Ill. 509; 1 Han. 27; *contra*, 64 Mo. 205. An improper discharge does not operate as an acquittal—27 Cal. 294.

1486. The court or judge, if the time for the trial of such party may be legally detained in custody, expired, must remand such party, if it be found that the party is not guilty.

return of the writ, or at the hearing. A subsequent day is too late (Rand. 701; 3 Zab. 311). If it appears that the commitment to the prison is void, and, further, that there is a valid judgment rendered by a competent court of which a certified copy can be obtained, the court or judge will order the prisoner to be retained until a certified copy can be obtained, and if obtained, remand him. 31 Cal. 8, 9.

If a probable cause of guilt is shown at the hearing he must be held for trial, though the offense proved is not specifically that charged. 2 Key. 44, 4 Har. (Dec. 15 '55, 65 Me. 12), 3 Ga. 73, 6 Rand. 618. Where the offense charged is so defectively set forth in the warrant of commitment that the party cannot be held thereunder, but it appears he ought to be discharged, the judge ought to hold the party for examination, and cause the complainants and witnesses to attend before him for that purpose—13 Cal. 133.

1487. If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this State, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last section—

1. When the jurisdiction of such court or officer has been exceeded.

2. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge.

3. When the process is defective in some matter of substance required by law, rendering such process void.

4. When the process, though proper in form, has been used in a case not allowed by law.

5. When the person having the custody of the prisoner is not the person allowed by law to detain him.

6. Where the process is not authorized by any order, judgment, or decree of any court, nor by any provision of law.

7. Where a party has been committed on a criminal charge without reasonable or probable cause.

1488. If any person is committed to prison, or is in custody of any officer on any criminal charge, by virtue of a warrant of commitment of a justice of the peace, such person must not be discharged on the ground of any defect of form in the warrant of commitment.

nor discharged for formal defects. Where a party is held in custody under an order regular on its face, he cannot be discharged on

The court will not grant a writ of habeas corpus on error or variance, or misstatement of the offense.—1 C. 75; 2 *Id.* 612; 4 *Dall.* 412; 1 *Hill*, 151; 4 *Har.* (Det.) 5 Cowen, 17; 11 *Nev.* 28. The omission of the name of the party committed to a jail before the grand jury is not a ground for discharge on habeas corpus.

The action of the court on a writ of habeas corpus is not reversible on error.—2 *Cal.* 424; 10 *Gray*, 240; 6 *Johns.* 429; 4 *P.* 86; 129; 4 *Chil.* 304; 34 *Iowa*, 181; 5 *Ala.* 18; 9 *Miss.* 44; 44 *Tex.* 467; 10 *Cent. L. J.* 5, *contra*, 6 *Johns.* 337; no injury may be done—14 *Peters*, 540; 18 *How* 307; see 33 *Coun.* 321; 31 *Md.* 329; 36 *Ala.* 306; 2 *Tex.* 410.

The decision of an officer having power to issue a writ of habeas corpus upon any subsequent application between the same parties when the subject-matter is the same, and there are no new facts, is not conclusive when there is no new fact.—1 *Parker Cr. R.* 129; 5 *Id.* 129. A decision under a previous writ is not conclusive when there are new facts. It cannot be reviewed by the writ of error—6 *Id.* 276.

1489. If it appears to the court or judge, or otherwise, or upon the inspection of the warrant of commitment, and such other proceedings as may be shown to the court, that the party is guilty of a criminal offense, he may be discharged, such court or judge, although the warrant is defective or unsubstantially set forth in the warrant of commitment, must cause the other necessary witnesses to be subpoenaed at such time as ordered, to testify before the court, and upon the examination he may discharge him, or let him to bail, if the offense be bailable, or commit him to custody, as may be just and legal.

Additional evidence may be submitted to show that the prisoner is detained—4 Parker Cr. R. 656.

Not competent to retry issues of fact, or to review the proceedings of the trial—13 Cal. 130. If bail has been taken, and is deemed sufficient for his appearance, the court may permit it to stand; the court may order him into custody, either for the purpose of giving additional bail or for his detention until trial—35 Cal. 103. It does not appear to the court that the prisoner is in fact guilty of any criminal offense, he must be discharged—43 Cal. 43, see 44 Cal. 103.

9. When a person is imprisoned or detained in jail on any criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, and alleging that he is illegally confined.

For purpose of bail. Where application is made to be admitted before indictment, inquiry as to guilt or innocence must be made to the proof on which the commitment was ordered—1 Hill, Parker Cr. R. 77. The indictment is conclusive as to the amount of bail—19 Cal. 537, 1 Burr. Tr. 30, 3 Wash. C. C. 224, 4 Parker Cr. R. 510, see 34 Ala. 270, 38 Ill. 437, 20 N. H. 160, 2 Parker Cr. R. 510; 15 Tex. 45. No appeal lies from an order admitting a party to habeas corpus—40 Cal. 627, see 54 id. 102.

1. Any judge before whom a person who has been committed on a criminal charge may be brought on a writ of habeas corpus, if the same is bailable, may take an undertaking of bail from such person as in other cases, and in the same in the proper court.

Cal. 103.

2. If a party brought before the court or judge on return of the writ is not entitled to his discharge, and is bailed, where such bail is allowable, the court or judge must remand him to custody or place him under restraint from which he was taken, if the person under custody or restraint he was is legally entitled to his discharge.

Cal. 103.

3. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the discharge or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

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custody as his age or the necessities of his

1495. No writ of habeas corpus can be granted for defect of form, if it sufficiently appear that the person is in custody or under whose restraint the person restrained is, the officer or person detainer, the court or judge before whom he is to be brought.

1496. No person who has been discharged from the custody of the court or judge upon habeas corpus, imprisoned, restrained, or kept in custody, except in the following cases:

1. If he has been discharged from custody, and is afterwards committed for trial by legal order or process.

2. If, after a discharge for defect of form or defect of the process, warrant, or commitment, in a criminal case, the prisoner is again arrested without proof and committed by legal process for a new offense.

1497. When it appears to any court authorized by law to issue the writ of habeas corpus, that one is illegally held in custody, confinement, or restraint, and that there is reason to believe that he should be carried out of the jurisdiction of the court before whom the application is made, it shall be

WRIT OF HABEAS CORPUS. §§ 1498-1505

1498. The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

1499. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant.

1500. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and return may thereupon be had as upon a return to a writ of habeas corpus.

1501. If such party is held under illegal restraint or custody, he must be discharged; and if not, he must be restored to the care or custody of the person entitled thereto.

1502. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

1503. All writs, warrants, process, and subpoenas authorized by the provisions of this chapter must be issued by the clerk of the court, and, except subpoenas, must be sealed with the seal of such court, and served and returned forthwith, unless the court or judge shall specify particular time for any such return.

1504. All such writs and process, when made returnable before a judge, must be returned before him at the city seat, and there heard and determined. [In effect February 18th, 1880.]

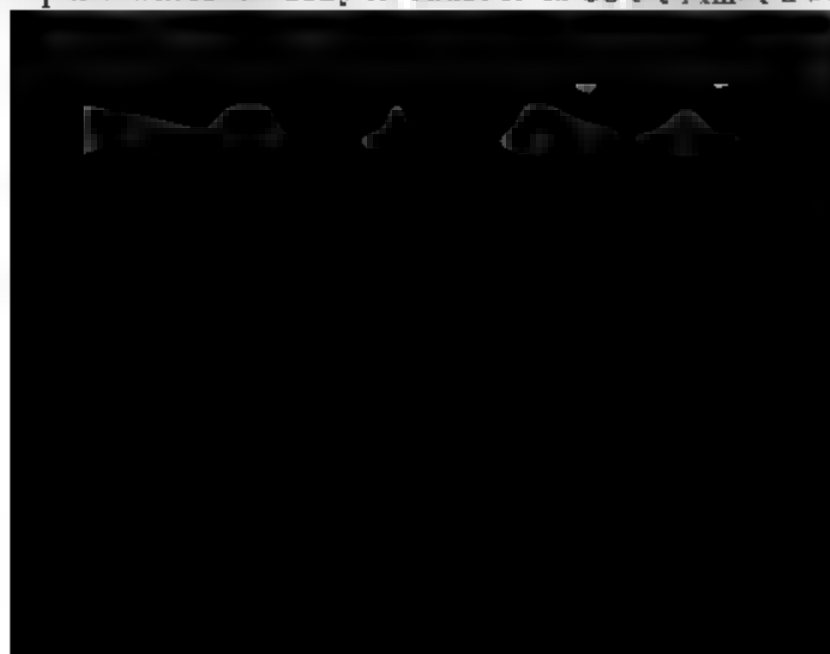
1505. If any judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or the officer or person to whom such writ may be directed refuses obedience to the command thereof he shall forfeit and pay to the person aggrieved a sum not exceeding a thousand dollars, to be recovered by action in any court of competent jurisdiction.

CHAPTER II

OF CORONERS' INQUESTS AND DUTIES OF CORONERS

- § 1510. Coroner to summon jury to inquire into cause of death.
- § 1511. Jurors to be sworn.
- § 1512. Witnesses to be summoned.
- § 1513. Witnesses compelled to attend.
- § 1514. Verdict of jury in writing. What to contain.
- § 1515. Testimony in writing, and where filed.
- § 1516. Exception.
- § 1517. Coroner to issue warrant, when.
- § 1518. Form of warrant.
- § 1519. How served.

1510. When a coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is found, and cause it to be examined by a jury of twelve persons, who shall inquire into the cause of death, and return a verdict in writing, which shall be filed in the office of the coroner.



1512. Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who, in their opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body, and give a professional opinion as to the cause of the death.

1513. A witness served with a subpoena may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace.

1514. After inspecting the body and hearing the testimony, the jury must render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means, he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

1515. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the Superior Court of the county. [In effect April 12th, 1880.]

1516. If, however, the person charged with the commission of the offense is arrested before the inquisition is filed, the coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with depositions and statement taken before him, to the office of the clerk of the Superior Court of the county. [In effect April 12th, 1880.]

1517. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing

the act is ascertained by the inquisition, and is in custody, the coroner must issue a warrant, signed with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

1518. The coroner's warrant must be in substance the following form:

"COUNTY OF —.

"The People of the State of California to any sheriff, constable, marshal, or policeman in this State:

"An inquisition having been this day found by a coroner's jury before me, stating that A. B. has committed death by the act of C. D., by criminal means, (or as the case may be, as found by the inquisition) you are hereby commanded forthwith to arrest the above named C. D. and take him before the nearest or most accessible magistrate in this county.

"Given under my hand this — day of — 18—, E. F., Coroner of the county of —

1519. The coroner's warrant may be served in any county, and the officer serving it must proceed to arrest the person named in the warrant of arrest.



CHAPTER III.

OF SEARCH-WARRANTS.

- 1523. Search-warrant defined
- 1524. Upon what ground it may issue.
- 1525. It cannot be issued but upon probable cause, etc.
- 1526. Magistrates must examine on oath, complainant, etc.
- 1527. Depositions what to contain.
- 1528. When to issue warrant.
- 1529. Form of warrant.
- 1530. By whom served.
- 1531. Officer may break open door, etc., to execute warrant.
- 1532. May break open door, etc., to liberate person acting in his aid.
- 1533. When warrant may be served in the night.
- 1534. Within what time warrant must be executed.
- 1535. Officer to give receipt for property taken.
- 1536. Property, how disposed of
- 1537. Return of warrant and inventory of property taken.
- 1538. Copy of inventory, to whom delivered.
- 1539. Proceedings, if grounds of warrant are controverted.
- 1540. Property, when to be restored.
- 1541. Depositions, warrants, etc., to be returned by magistrate to County Court.
- 1542. Search of defendant in presence of magistrate.

1523. A search-warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

1524. It may be issued upon either of the following grounds.

When the property was stolen or embezzled; in such case it may be taken on the warrant, from any place in which it is concealed, or from the possession of any person by whom it was stolen or embezzled, or from any person in whose possession it may be.

When it was used as the means of committing a

possession it may be.

3. When it is in the possession of any person intent to use it as the means of committing a crime or in the possession of another to whom he may have delivered it for the purpose of concealing its being discovered; in which case a search may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

1525. A search-warrant cannot be issued unless there is probable cause, supported by affidavit, describing the person, and particularly describing the property and the place to be searched.

1526. The magistrate must, before issuing a search-warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions, and cause them to be subscribed by the parties and sworn to by them.

Oath.—A search-warrant may be issued on oath, when the property has been secreted—1 Dowl. & R. 87. See *ante*, § 1524.

1527 The depositions must set forth the facts which lead to establish the grounds of the application, and the cause for believing that they exist.

1528. If the magistrate is satisfied that there is probable cause, he may issue a search-warrant.

"COUNTY OF —.

The People of the State of California to any sheriff, constable, marshal, or policeman in the county of —:

"Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to section one thousand five hundred and twenty-five, or if the affidavit be not positive, that there is probable cause for believing that (stating the ground of the application in the same manner), you are therefore commanded, in the day-time (or at any time of the day or night, as the case may be, according to section one thousand five hundred and thirty-three), to make immediate search on the person of C. D. (or in the house situated —, (describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property (describing it with reasonable particularity), and if you find the same or any part thereof, bring it forthwith before me at (stating the place).

"Given under my hand, and dated this — day of —, A. D. eighteen —.

"E. F., Justice of the Peace" (or as the case may

requisites of — It should specify the place, the person, and the thing to be found. 34 Mo. 30, 47 N. H. 544; 2 Met. 329, 3 Allen, 313, 6 Id. 596; 4, 5, 8 Gray, 539, 13 Id. 454, 1 Conn. 46, 2 Iowa, 15.

must accurately specify the building to be searched. 109 Mass. 45, 62 Me. 43, 54 N. H. 14. See 2 Iowa, 165. If authority is not to search a specific building, no other can be searched. 38 Me. 134, 15 Id. 44, 41 Iowa, 399, 23 J. Marsh. 44, See 3 Allen 70, nor can an article that is not a felony be searched for, unless to obtain proof of the felony. 5 Dowd & R. 224, 6 Barn. & C. 252.

30. A search-warrant may in all cases be served by the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring him to be present and acting in its execution.

1. The officer may break open any outer or inner window of a house, or any part of a house, or any outhouse, to execute the warrant, if, after notice of entry and purpose, he is refused admittance.

Breaking and entering.—The house may be broken open to the warrant, in case of a felony, but admittance must first be refused—129 Mass. 190. The keys ought to be first demanded—Me. 234.

1532. He may break open any outer or inner window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of a warrant, is detained therein, or when necessary for his own liberation.

1533. The magistrate must insert a direction in the warrant that it be served in the day-time, unless the facts are positive that the property is on the premises in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

1534. A search-warrant must be executed and returned to the magistrate who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

1535. When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken, or in whose possession it was found. Printed



of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

1538. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

1539. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in section eight hundred and sixty-nine.

1540. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

1541. The magistrate must annex together the depositions, the search-warrant and return, and the inventory, and return them to the next term of the county court having power to inquire into the offenses in respect to which the search-warrant was issued, at or before its opening on the first day.

1542. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing be retained, subject to his order, or to the order of the court in which the defendant may be tried.

PROCEEDINGS AGAINST FUGITIVES FROM

- § 1547. Rewards for the apprehension of fugitives from
- § 1548. Fugitives from another State, when to be delivered.
- § 1549. Magistrate to issue warrant.
- § 1550. Proceedings for the arrest and commitment charged.
- § 1551. When and for what time to be committed.
- § 1552. His admission to bail.
- § 1553. Magistrate must notify district attorney of the
- § 1554. Duty of the district attorney.
- § 1555. Person arrested, when to be discharged.
- § 1556. Magistrate to return his proceedings to Superior
- § 1557. Fugitives from this State—accounts.
- § 1558. No fee to be paid to public officer procuring

1547. The governor may offer a reward, not more than one thousand dollars, payable out of the general fund, for the apprehension of—

1. Of any convict who has escaped from prison; or,
2. Of any person who has committed, or is charged with the commission of, an offense punishable with imprisonment.

1548. A person charged in any State of this Union with treason, felony, or other crime, who is found in this State, must, on demand of the executive authority of the State, be delivered to the

if the indictment should accompany the demand; it is sufficient if referred to in the writ—7 Ind. 291, 29 id. 10.

Requisition or proceeding must show that the alleged crime committed within the jurisdiction of the State making the application—33 Cal. 221, and the charge must be positive, not on information or belief—1. The affidavit must show that the supposed fugitive has fled from justice in the State, and has taken refuge or is in another State—10 West. Jur. 15. It is not necessary that the affidavit, upon which the requisition is issued, should set out the crime charged with all legal exactness—5 Cal. 257, nor that it should be a fair view from justice, that he committed the crime, and then secretly fled, is sufficient—5 Cal. 257.

On the requisition certifies that the affidavit is "duly authenticated according to the laws of said State," it is sufficient—5 Cal. 237. **Governor of a State issuing the requisition for the fugitive is the proper judge of the authenticity of the affidavit—**5 Cal. 257.

Extradition.—Certain of the colonies, before the declaration of independence, pledged their faith to each other that on the escape of a fugitive from justice, the colony wherein he should be found would, upon the certificate of two magistrates of the jurisdiction which he escaped, forthwith grant a warrant for his arrest, and return him into the hands of the officers or other persons in pursuit—24 How. 66, 11 How. 328, 2 Serg. & R. 1, 2 West. Jur. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

And the thirteen colonies, in the articles of confederation and alliance, did more explicitly provide for the extradition of fugitives—11 How. 66, 11 id. 328. Afterward, upon the adoption of the Constitution of the United States, the same provision was formally incorporated into the Constitution, being embodied in the word "in all things every offense shall be punished by the law of the State in which it was committed—11, 45 Id. 113. The provision of the Constitution of the United States rendered absolute the duty to surrender criminals by one State to another, which before that was a matter of comity and in the discretion of the State authorities—24 How. 66, 31 N. Y. L. 141, Phil. N. C. 57, 1 Sand. 701, 31 Vt. 439, 1 Mass. 429, leaving no discretion with the State on which the act is made—14 How. 66.

Acts made punishable by the laws of the State where the act is committed, come within the meaning of the Constitution—24 How. 66, 31 N. Y. L. 141, Phil. N. C. 57, 1 Sand. 701, 31 Vt. 439, 1 Mass. 429, leaving no discretion with the State on which the act is made—14 How. 66.

Provisions of the Constitution are not intended for the benefit of persons, and may not be resorted to for the purpose of evading a prior warrant of jurisdiction—6 Wis. 47, 2 Sand. 717, 3 Id. 3, 11 How. 17, 25. The courts of the United States are full and jurisdiction over cases of this nature—2 How. 66, 11 id. 328. **Courts of the United States with full power to extradite fugitives in the United States government and States have no authority to grant or cause the extradition of one of its citizens on the ground of a foreign power—**6 N. Y. L. 1, 14 Peters. 540, see 4 Wash. 44, 4 id. 534.

A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice if found in this State.

Form for arrest.—The proceeding must be such as is usual in charges against residents, and the warrant, indictment, and return must specify the nature of the crime charged—49 Cal. 436, 10 Id. 153, 23 Ind. 450, 58 N. Y. 182.

Rev. Code—51.

The only authority as to the extradition of criminals, is derived from the national Constitution, and if the proceeding be not in conformity thereto, extradition cannot be enforced—49 Cal. 435; 1 Mich. 121; 29 Iowa, 341; 6 Wend. 212, 1 Sand. 701, 6 Wis. 45, 55 N. Y. 401, Tex. 635, see 6 Peters, 761, 4 Wash. C. C. 371.

A person cannot be arrested, unless a prosecution has been commenced and is pending against him in the State having jurisdiction of the offense—49 Cal. 437.

A State law for the surrender of fugitives from justice, is not constitutional—49 Cal. 434; 10, 436.

1550. The proceedings for the arrest and commitment of a person charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Proceeding for arrest.—A State may provide for the arrest and detention of fugitives from justice before the requisition has been made, and may accompany the act for the arrest by as many cords, or by the mode of arrest and examination as it sees fit, and such act shall be strictly complied with—51 Cal. 297. An officer armed with process cannot take a person from the hands of another officer who holds him on a warrant issued on a criminal charge—51 Cal. 298.

The courts possess no power to control the executive department in surrendering fugitives from justice, yet, having acted thereon, the action may be examined into in every case where the liberty of the subject is involved—5 Cal. 237. The sufficiency of the charge and regularity of the proceedings may be examined into on habeas corpus—5 Cal. 237, 56 N. Y. 182, 9 Tex. 635; 14 Abb. Pr. N. S. 333, 19 N. Y. 636.

1551. If, from the examination, it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, as is specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

Commitment.—The law authorizing the arrest of a fugitive and a demand for his surrender, and his detention for a reasonable time to afford an opportunity for executive demand, is not in conflict with Art. 4, § 2, of the Constitution of the United States—43 Cal. 45.

The State on which the demand is made is not bound to deliver the offender until its own laws are satisfied—51 How. 1^r. 423. One State cannot enforce the penal or criminal laws of another, or punish offenses against another State or sovereignty—10 Wheat. 66; *id.* 123; 14 Johns. 338; 2 Dutch. 489; 17 Mass. 515, 548; Tayl. (N. C.) 66; 14 Vt. 367; *Rumph.* 468.

1552. The magistrate may admit the person arrested to bail by an undertaking with sufficient securities, and such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

1553. Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county.

1554. The district attorney must immediately thereafter give notice to the executive authority of the State, to the prosecuting attorney or presiding judge of the part of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

1555. The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

Person, when discharged.—When a person is arrested before a demand for his surrender has been made, he is entitled to his discharge. If after his examination has commenced it is postponed without his consent for a longer period than that mentioned in § 861 of the Code—51 Cal. 288.

1556. The magistrate must return his proceedings to the Superior Court of the county, which must thereupon enter into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention or may order his undertaking of bail to be canceled, or may continue his detention for a longer time, or return him to bail, to appear and surrender himself within the time specified in the undertaking. [In effect April 1880.]

State of the United States, or of any
the surrender to the authorities of this
from justice, who has been found and
State or foreign government, the account
employed by him to bring back such
audited by the board of examiners, and
State treasury.

The fact that a fugitive from justice has not
sixteen months, and that he was a passenger
bonded for a specified port, and that neither
ever been heard from, is not sufficient to raise
his death - 8 Cal. 65.

1558. No compensation, fee, or reward
can be paid to or received by a public officer
or other person, for a service rendered
the governor the demand mentioned in
or the surrender of the fugitive, or for
this State, or detaining him therein, or
for in such section.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

- § 1562. Parties to special proceedings, how designated.
- § 1563. Entitling affidavits.
- § 1564. Subpoenas.

1562. The party prosecuting a special proceeding of a criminal nature is designated in this Code as the complainant, and the adverse party as the defendant.

1563. The provisions of section one thousand four hundred and one, in respect to entitling affidavits, are applicable to such proceedings.

1564. The courts and magistrates before whom such proceedings are prosecuted, may issue subpoenas for witnesses, and punish their disobedience in the same manner as in a criminal action.

TITLE XIII.

Proceedings for bringing Persons imprisoned in the State Prison, or the Jail of another County, before a Court.

§ 1567. Persons imprisoned in another county, how brought before court.

1567. When it is necessary to have a person imprisoned in the State prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court, and executed by the sheriff of the county where it is made.

TITLE XIV.

Disposition of Fines and Forfeitures.

§ 1570. Fines and forfeitures, how disposed of.

1570. All fines and forfeitures collected in any court, except Police Courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held. [Approved March 30th, 1874; effect July 1st, 1874.]

The meaning of §§ 240, 1437, and this section, construed together, is that for the crime of assault the defendant may be fined not exceeding one hundred dollars, and in addition be adjudged to pay the costs of the proceeding; and the payment of the fine, but not of the costs, may be enforced by imprisonment—43 Cal. 146.



PART III.

STATE PRISON AND COUNTY JAILS.

(§§ 1573-1614.)

[000]



STATE PRISON.

TITLE I.

the State Prison and the Discharge of Prisoners therefrom before their Term of Service expires.

AP. I. OF THE STATE PRISON, §§ 1573-87.

II. OF THE DISCHARGE OF PRISONERS BEFORE THE EXPIRATION OF THEIR TERM OF SERVICE, §§ 1590-5.

CHAPTER I.

OF THE STATE PRISON.

- § 1573. Under the charge and control of a board of directors.
- § 1574. President pro tem of Senate, when to act as director.
- § 1575. Compensation of directors.
- § 1576. Board must adopt rules and regulations.
- § 1577. Board may appoint warden and other officers.
- § 1578. Duties of clerk and other officers.
- § 1579. Monthly reports of officers.
- § 1580. Board must keep accounts and report to the governor.
- § 1581. Persons convicted of offenses against the United States.
- § 1582. Disposition of insane prisoners.
- § 1583. State prison fund.
- § 1584. State prison fund, how disbursed.
- § 1585. Board cannot contract debts.
- § 1586. Compensation for transportation of convicts.
- § 1587. Contract to be given at public letting.

1573. The State prison is under the charge, control and superintendence of a board of directors, consisting



prison, which rules must be printed, and copies thereof furnished to every officer appointed by the board.

1577. The board may appoint a warden, clerk, and such other officers as may be necessary for the management and safe-keeping of the prisoners.

1578. The clerk must keep a record of the transactions of the board, and he and the warden and other officers appointed must perform such other duties as are required by the board, or the rules and regulations adopted thereby.

1579. The warden and other officers appointed must make a monthly report to the board, which must contain statement of business done and transactions had in all several departments.

1580. The board must keep correct accounts of all moneys received from proceeds of convict labor, and appropriate such funds to the maintenance of the convicts and the payment of prison expenses, and must make a full report to the governor on the first Monday of each August next before the assembling of the Legislature, which report must contain a complete statement of the number and condition of the prisoners at the prison, the number and character of officers they have appointed, and the monthly pay received by each; the amount of expenses incurred, and for what; the amount and condition of personal property, belonging to the State, connected with the State prison; and the actual condition of the buildings and property.

1581. The authorities of the State prison must receive at the prison any person convicted of an offense against the United States, and keep such person in solitary confinement or at hard labor, or in confinement with or without hard labor, as provided in the order of the court pronouncing sentence, until legally discharged, the United States supporting such convict, and paying the expenses of the execution of his sentence.

1582. When the physician, warden, and captain of the yard of the State prison, after an examination and opinion that any prisoner is insane, they must certify that fact under oath to the governor, who may, in his discretion, order the removal of such prisoner to the asylum. As soon as the authorities of the asylum ascertain that such person is not insane, they must immediately notify the warden of that fact, and thereupon the warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has expired.

1583. The moneys appropriated by the Legislature and the proceeds of the labor of prisoners constitute the State prison fund.

1584. The moneys in the State prison fund are available to the payment of the expenses of the prison, the salaries of the directors and officers thereof, the salaries and salaries must be audited and allowed by the board of examiners of State prison accounts, which, upon the order of the board of directors, the attorney-general, treasurer, and controller must draw his warrant on the treasurer, and the treasurer must pay the same out of the State prison fund.

1585. The board of directors cannot contract or incur any liability binding upon the State.

1586. Sheriffs delivering prisoners at the State prison must receive all expenses necessarily incurred for their own services, the amount of transportation, and also a just and reasonable compensation in each case to be audited and allowed by the board of examiners and paid out of the State treasury appropriated for that purpose. No further compensation shall be received for such transportation or services. [In effect.]

1587. The board of directors are authorized and required to contract for provisions

grain, forage, fuel, and other supplies for the prison, for any period of time not exceeding one year; and such contract shall be given to the lowest bidder, at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and price. Each bid shall be accompanied by a bond, in such penal sum as said board shall determine, with good and sufficient sureties, conditioned for the faithful performance of the terms of such contract. Notice of the time, place, and conditions of letting of each contract shall be given, for at least four consecutive weeks, in two daily newspapers in the cities of San Francisco and Sacramento, and also four insertions in a weekly paper published in the county in which the prison is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for proposals, and may so continue to renew the advertisement until satisfactory contracts may be had, and in the meantime the board may contract with any one whose offer may be regarded just and proper, but no contract thus made shall be let to run more than sixty days, or shall in any case extend beyond the public letting. No bids shall be accepted and a contract entered into in pursuance thereof, when such bid is higher than any other bid made at the same letting for the same article, and where a contract can be had at such lower bid. When two or more bids for the same article are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the State, or may divide the contract between the bidders, as in their discretion may seem proper and right; *provided*, no contract shall be given, or purchase made, where either of the board, or any of the officers of the prison, is interested. All contracts or purchases made in violation of this section shall be void. [Approved Feb. 24th, 1874.]

CHAPTER II.

OF THE DISCHARGE OF PRISONERS BEFORE THE END OF THEIR TERM OF SERVICE.

- § 1590. Credits for good behavior, how and when allowed.
- § 1591. Credits, when forfeited.
- § 1592. Board to make rules and regulations.
- § 1593. Board, when to report credits to governor.
- § 1594. Further powers of the board.
- § 1595. Recommendations for pardon reported to Leg.

1590. The board of State prison directors of this State shall require of every able-bodied convict confined in prison as many hours of faithful labor, in each day during his term of imprisonment, as shall be prescribed by the rules and regulations of the prison. Every convict faithfully performing such labor, and in all respects obedient to the rules and regulations of the prison, shall be entitled to a credit of one day for every week of faithful labor, and if unable to work, yet faithful and obedient, shall be entitled to a credit of one day for every week of faithful and obedient conduct.

et who attempts to escape, after the passage of this act, shall be sent by the State prison officials to the governor for commutation herein provided; *provided farther*, that those prisoners entitled to their discharge at the date of the passage of this act, by virtue of the provisions thereof not more than one shall be discharged on any one day, and the discharges shall be made in the order in which they would have occurred if this act had been passed April, eighteen hundred and sixty-four. [Approved March 29th, in effect April 15th, 1878.]

Deduction from term of service. When a party is sentenced to two terms, the credits must not be deducted from the first term, but at the end of the entire term included in both sentences. The entire period of both is but one term—49 Cal. 465.

1591. The rule of commutation fixed in the preceding section is to be so applied as that any refusal to labor, breach of the prison rules, or other misconduct, works forfeiture of the credits of time thus earned, or such part of it as the warden or resident director may determine, subject to confirmation or rejection by the board of directors, on appeal by the prisoner. Unless the board, on appeal, at its first session thereafter, rejects the forfeiture, it is confirmed. Credits once forfeited cannot be restored except by the board, and then only when circumstances render such restoration urgently necessary. The above provisions apply to all persons now imprisoned in the State prison, and the commutation must be computed from April fourth, A. D. eighteen hundred and sixty-four.

1592. The board may make such rules and regulations as may be necessary to carry into effect the provisions of this chapter, and may declare and establish a proper scale of debits and credits for good conduct or misconduct, which shall accompany the rules of discipline of the prison, and, in a book to be kept for that purpose, must be entered up, at the end of each month, the total of credits to which each prisoner may be entitled. *On the first day of each month announce such result*

to the prisoners. Every contractor employing convict labor must keep a similar record of the conduct of all prisoners employed by him, and submit the same for inspection to the board at the end of each month, who must place the same into consideration in making up their decisions.

1593. At the end of every month the board must report to the governor of this State the names of all prisoners whose terms of imprisonment are about to expire by reason of the benefits of this chapter, giving in the report the terms of their sentences, the date of imprisonment, the amount of total credits to the date of report, and the date when their service would expire by limitation of sentence. The governor, at the expiration of the term for which any prisoner has been sentenced, less the number of days allowed and credited to him, must order the release of such prisoner, by an order in his hand addressed to the warden of the prison, in the mode and form as he may deem proper, and without restoration to citizenship, according in his discretion.

1594. The board must grant and enter up in favor of such prisoners whom they may deem worthy, by reason of good conduct and industry, during the twelve months prior to the fourth day of April, A. D. eighteen hundred and sixty-four, the credits authorized by section one thousand five hundred and ninety, not exceeding thirty per cent of the same to be deducted from the term of their imprisonment.

1595. The board must report to the Legislature at each regular session, the names of any persons confined in the State prison, who, in their judgment, ought to be pardoned and set at liberty on account of good conduct or unusual terms of sentence, or any other cause which, in their opinion, should entitle such prisoners to a pardon. Whenever the Legislature, by a majority of both houses, shall recommend to the governor that any or all of the persons so reported be pardoned by him, he may thereupon pardon such prisoners.

TITLE II.

Of County Jails.

County jails, by whom kept and for what used.

Rooms required in county jails.

Prisoners to be classified.

Prisoners committed must be actually confined.

Sheriff to receive prisoners committed by courts.

Sheriff answerable for safe-keeping of such prisoners.

When jail of a contiguous county may be used.

Keeper of jail in contiguous county to receive prisoners.

When jail in contiguous county to cease to be used.

Prisoners to be returned to proper county.

Prisoners may be removed in case of fire.

Prisoners may be removed in case of pestilence.

Papers served on jailer for prisoner.

Guard for jail.

Sheriff to receive all persons duly committed.

Prisoners on civil process, when not to be received.

Prisoners may be required to labor.

Rules and regulations for the performance of labor.

7. The common jails in the several counties of the State are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows. For the detention of persons committed in order to their attendance as witnesses in criminal cases. For the detention of persons charged with crime and held for trial. For the confinement of persons committed for confinement upon civil process, or by other authority of law. For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

8. Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and

distinctly from persons belonging to either of the classes:

1. Persons committed on criminal process and detained for trial.
2. Persons already convicted of crime and held under sentence.
3. Persons detained as witnesses or held under process, or under an order imposing punishment for contempt.
4. Males separately from females.

1599. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

1600. A prisoner committed to the county jail for trial, or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is discharged, and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, he shall be liable for escape.

1601. The sheriff must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this State; provision being made by the United States for the support of such prisoner.

1602. A sheriff, to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe-keeping in the courts of the United States according to the laws thereof.

1603. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of

prisoners, the county judge may, by a written appointment filed with the county clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

1604. A copy of the appointment, certified by the county clerk, must be served on the sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the next section, and who is responsible for the safe-keeping of the persons so committed, in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the sheriff of the county from which they were removed.

1605. When a jail is erected in the county for the use for which the designation was made, or its jail is rendered safe and safe for the confinement of prisoners, the county judge of that county must, by a written revocation, filed with the county clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked.

1606. The county clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had.

1607. When a county jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the sheriff or keeper must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

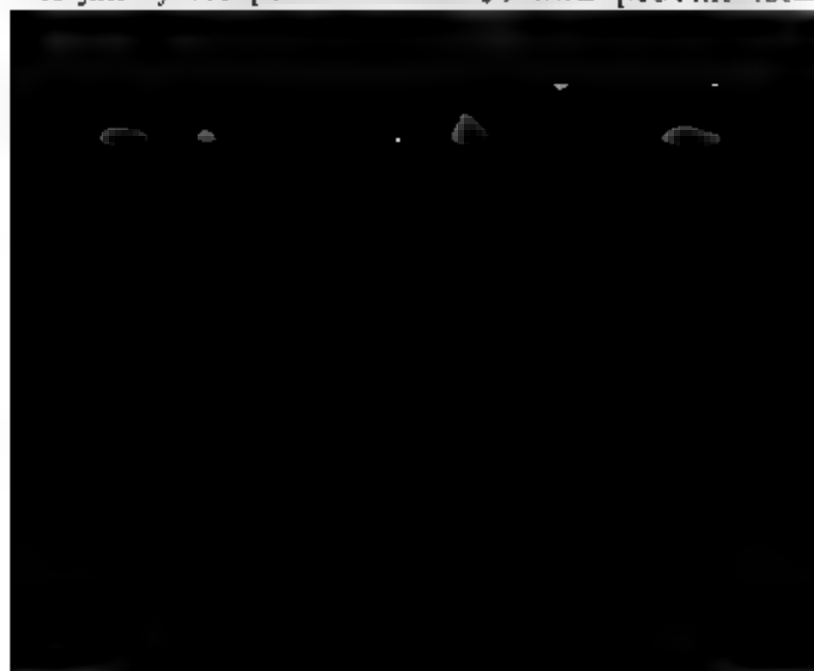
1608. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the county judge may, by a written appointment, design-

nate a safe and convenient place in the county, or jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the county clerk, and authorize the sheriff to remove prisoners to the place or jail designated, and there confine them until they can be safely returned to the place from which they were taken.

1609. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, and note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages sustained thereby.

1610. The sheriff, when necessary, may, with the assent in writing of the county judge, or in a city, or town, the mayor thereof, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which are a county charge.

1611. The sheriff must receive all persons committed to jail by competent authority, and provide them



COUNTY JAILS.

§§ 1613-14

3. Persons confined in the county jail under a sentence of imprisonment rendered in a criminal action proceeding, may be required by an order of the board of supervisors to perform labor on the public works or on the county.

4. The board of supervisors making such order shall prescribe and enforce the rules and regulations which such labor is to be performed.

Approved February 14th, 1872.

NEWTON BOOTH,

Governor.



PROVISIONS
OF THE
CODE OF CIVIL PROCEDURE
RELATING TO
JURIES AND EVIDENCE.

PEN. CODE.—'33. [625]

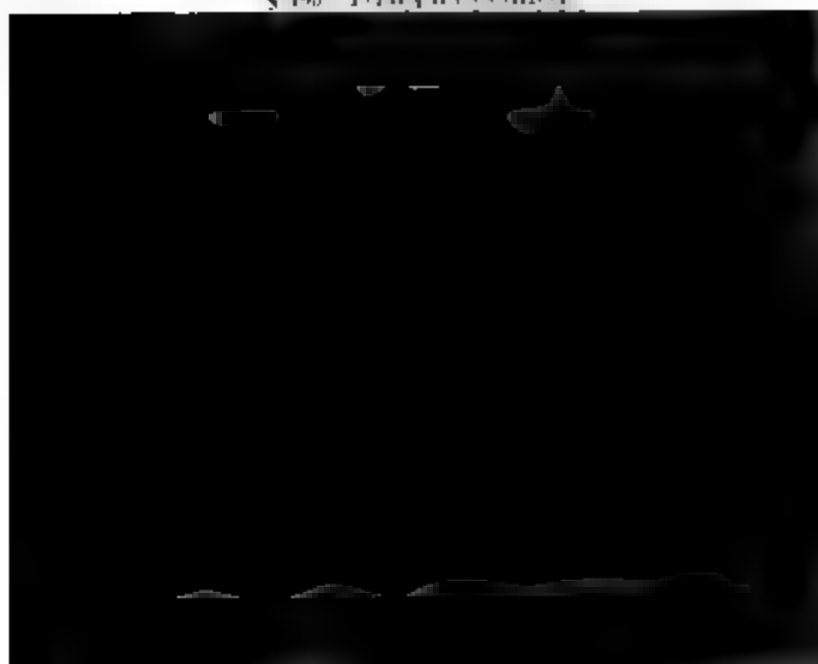
CHAPTER I. JURORS.

- ARTICLE I. JURORS IN GENERAL.
- II. QUALIFICATIONS AND EXEMPTIONS OF JURORS.
 - III. OF SELECTING AND RETURNING JURORS FOR COURTS OF RECORD.
 - IV. OF DRAWING JURORS FOR COURTS OF RECORD.
 - V. OF SUMMONING JURORS FOR COURTS OF RECORD.
 - VI. OF SUMMONING JURORS FOR COURTS NOT OF RECORD.
 - VII. OF SUMMONING JURORS OF INQUEST.
 - VIII. OBEDIENCE TO SUMMONS, HOW ENFORCED.
 - IX. OF IMPANELING GRAND JURIES.
 - X. OF IMPANELING TRIAL JURIES IN COURTS OF RECORD.
 - XI. OF IMPANELING TRIAL JURIES IN COURTS NOT OF RECORD.
 - XII. OF IMPANELING JURIES OF INQUEST.

ARTICLE I.

JURORS IN GENERAL.

- § 190. Jury defined.
- § 191. Different kinds of juries.
- § 192. Grand jury defined.
- § 193. Trial jury defined.



§ 193. A trial jury is a body of men returned from the citizens of a particular district before a court or officer of competent jurisdiction, and sworn to try and determine, by verdict, a question of fact.

Trial by jury—secs. 600-619.

Verdict—when need not be unanimous, Const. Cal. art. 1, sec. 7. See also, sec. 618.

§ 194. A trial jury shall consist of twelve men, provided, that in civil actions and cases of misdemeanor, it may consist of twelve, or of any number less than twelve, upon which the parties may agree in open court.

Less than twelve—Const. Cal. art. 2, sec. 7, and see 18 Cal. 410.

§ 195. A jury of inquest is a body of men summoned from the citizens of a particular district before the Sheriff, Coroner, or other ministerial officer, to inquire of particular facts.

ARTICLE II.

QUALIFICATIONS AND EXEMPTIONS OF JURORS.

§ 198. Who competent to act as juror.

199. Who not competent to act as juror.

200. Who exempt from jury duty.

201. Who may be excused.

202. Affidavit of claim to exemption.

§ 198. A person is competent to act as juror if he be:

1. A citizen of the United States of the age of twenty-one years, who shall have been a resident of the State one year, and of the county, or city and county, ninety days before being selected and returned;
2. In possession of his natural faculties, and of ordinary intelligence, and not decrepit;
3. Possessed of sufficient knowledge of the English language;
4. Assessed on the last assessment-roll of the county, or city and county, on property belonging to him.

Subdivision 1. Aliens—not competent, 17 Cal. 323, 51 Cal. 589.

Residence, generally—see Const. Cal. art. 2, sec. 4, art. 20, sec. 12; Political Code, sec. 52, 4 Cal. 175, 6 Cal. 410, 7 Cal. 91; 15 Cal. 48, 28 Cal. 162, 31 Cal. 261, 650.

Elector—juror formerly had to be—3 Cal. 108.

Subdivision 3. 32 Cal. 40.

Subdivision 4. 34 Cal. 673.

§ 199. A person is not competent to act as a juror:

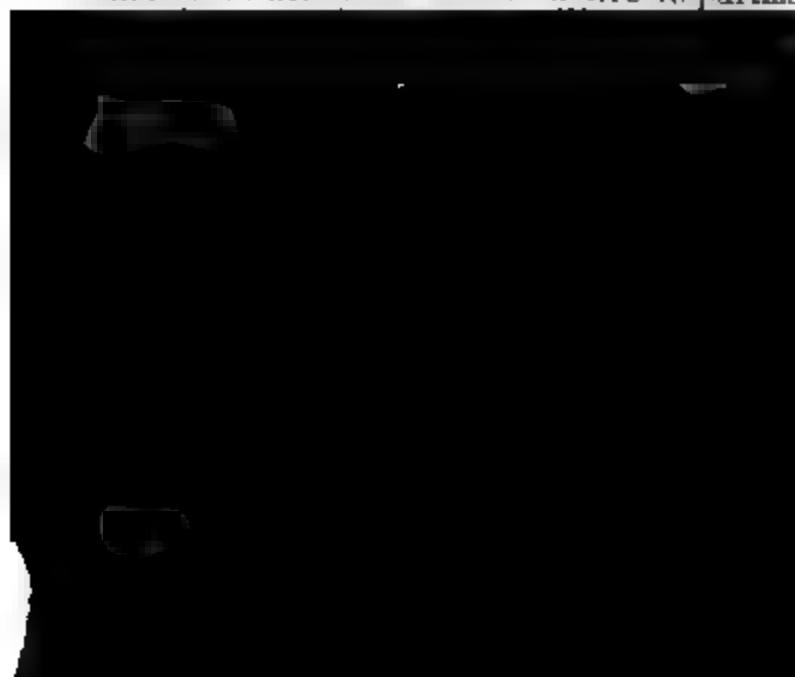
1. Who does not possess the qualifications prescribed by the preceding section, or,

CODE CIV. PROC. §.

2. Who has been convicted of malfeasance in any felony or other high crime.

200. A person is exempt from liability to act: if he be:

1. A judicial, civil, or military officer of the States, or of this State;
2. A person holding a county, city and county, ship office;
3. An attorney-at-law;
4. A minister of the gospel, or a priest of any denomination, following his profession;
5. A teacher in a university, college, academy;
6. A practicing physician, or druggist, actually in the business of dispensing medicines;
7. An officer, keeper, or attendant of an almshouse, hospital, asylum, or other charitable institution;
8. Engaged in the performance of duty as officer or attendant of the State Prison, or of a county jail;
9. Employed on board of a vessel navigating the waters of this State;
10. An express agent, mail-carrier, superintendant, or operator of a telegraph line doing a general business in the State, or keeper of a public toll-gate.
11. An active member of the National Guard, or an active member of a fire department.



202. If a person, exempt from liability to act as a juror, as provided in section two hundred, be summoned as a juror, he may make and transmit his affidavit to the clerk of the court for which he is summoned, stating his age, occupation, or employment, and such affidavit shall be delivered by the Clerk to the Judge of the court where the name of such person is called, and if sufficient in substance, shall be received as an excuse for non-attendance as a juror. The affidavit shall then be filed by the Clerk.

ARTICLE III.

SELECTING AND RETURNING JURORS FOR COURTS OF RECORD.

- 204. Jury lists, by whom and when to be made.
- 205. How selection shall be made.
- 206. Lists to contain how many names.
- 208. Lists to be placed with Clerk.
- 209. Duty of Clerk; jury boxes.
- 210. Regular jurors to serve one year.
- 211. Jurors to be drawn from boxes.

204. Within thirty days after the passage of this act the Superior Court in each of the counties of this State shall make an order designating the number of grand jurors, and also the number of trial jurors that, in the opinion of said court, will be required for the transaction of the business of said court during the year ending on the first day of January, eighteen hundred and eighty-eight and thereafter, in the month of January in each year, it shall be the duty of said court to make an order designating the estimated number of grand jurors, and also the number of trial jurors, that will, in the opinion of said court, be required for the transaction of the business of said court, and the court and the trial of causes therein, during the ensuing year. And immediately after said order shall be made, the Board of Supervisors shall select, as provided in the next section, a list of persons to serve as grand jurors and trial jurors in the Superior Court of said county during the ensuing year, or until a new list of jurors shall be provided. In cities and counties having over one hundred thousand inhabitants such selection shall be made by the Judges of the Superior Court.

205. They shall proceed to select and list from those named on the last preceding assessment roll of such city, or city and county, suitable persons competent to act as jurors; and in making such selection they shall omit the names of such only as are not exempt from

§ 206. The names of the persons which shall have been designated for such list shall be selected from the respective wards or townships of the respective counties in proportion to the number of inhabitants thereof, and the same can be estimated by the person making the list.

§ 208. Certified lists of the persons designated as jurors shall at once be placed in the hands of the County Clerk.

§ 209. On receiving such lists, the County Clerk shall file the same in his office and write down the names contained thereon on separate pieces of paper of uniform size and appearance, and fold each piece so that only the name thereon is visible. He shall deposit the pieces having on them the names of the persons designated as jurors in a box, to be called the "jury box."

§ 210. The persons whose names are designated as jurors shall be known as regular jurors, and shall serve as such until other persons are selected and designated as jurors.

§ 211. The names of persons, whether designated as regular jurors, shall be drawn from the "jury box" at the end of the year, there shall be the names in the "jury box" who may not have served as jurors during the year to serve as jurors, the names of such persons may be placed upon the list of jurors for the succeeding year.

ARTICLE IV.

OF DRAWING JURORS FOR SERVICE.

in any cause or causes at issue in said court, and in attendance, the court may make an order directing a jury to be drawn, and summoned to attend said court. Such order shall specify the number of jurors to be drawn, and the time at which the jurors are to attend. And the court may direct that such jury be either criminal or civil, in which a jury may be ordered in which a jury may have been demanded, and fixed for trial when a jury shall be in attendance.

Courts—secs. 55-79.

Immediately upon the order mentioned in the preceding section being made, the Clerk shall, in the presence of the court, proceed to draw the jurors from the "jury box."

of the court—People v. Gallagher, May 14th, 1880.

The Clerk must conduct said drawing as follows: He must shake the box containing the names of jurors to mix the slips of paper upon which such names are written as well as possible; he must then draw from the box as many slips of paper as are ordered by the court.

A minute of the drawing shall be entered in the minutes of the court, which must show the name contained on each slip of paper so drawn from the "jury box."

If the name of any person is drawn from the box who is insane, or who may have permanently removed from the county, or who is exempt from jury service, the fact shall be made to appear to the satisfaction of the court, the name of such person shall be omitted from the list, and the slip of paper containing such name shall be destroyed and another juror drawn in his place, and the name of such juror shall be entered upon the minutes of the court. The drawing shall be had as often as may be necessary until the whole number of jurors required are drawn.

When the drawing shall be completed, the Clerk shall prepare a copy of the list of names of the persons so drawn, and sign the same. In his certificate he shall state the order and of the drawing, and the number of jurors drawn, and the time when and the place where the jurors are required to appear. Such certificate and list shall be delivered to the Sheriff for service.

After a drawing of persons to serve as jurors, the Clerk shall preserve the ballots drawn, and at the next session or sessions for which the drawing was made.

had, he shall replace in the proper box from which were taken all ballots which have on them the names of persons who did not serve as jurors for the session or sessions aforesaid, and who are not exempt or incompetent.

ARTICLE V.

OF SUMMONING JURORS FOR COURTS OF RECORD.

- § 225. Sheriff to summon jurors, how.
- § 226. Of drawing and summoning jurors to attend forthwith.
- § 227. Of summoning jurors to complete a panel.
- § 228. Compensation of elisor.

§ 225. The Sheriff, as soon as he receives the lists of jurors drawn, shall summon the persons named therein to attend the court at the opening of the regular session thereof, or at such session or time as the court may order, by giving personal notice to that effect to each of them, or by leaving a written notice to that effect at their place of residence, with some person of proper age and legal capacity. The elisor shall return the list to the court at the opening of the regular session thereof, or at such session or time as the court may order, specifying the names of those who were summoned, and the manner in which each person was notified.

Objection to juror—name not on venire, 9 Cal. 537.

Return—time for, is directory merely, 4 Cal. 275.

§ 226. Whenever jurors are not drawn or summoned to attend any court of record or session thereof, or a sufficient number of jurors fail to appear, such court may order a sufficient number to be forthwith drawn and summoned to attend the court, or it may, by an order entered in its minutes, direct the Sheriff, or an elisor chosen by the court, forthwith to summon so many good and lawful men of the county, or city and county, to serve as jurors as may be required, and in either case such jurors shall be summoned in the manner provided in the preceding section.

Special jury—4 Cal. 219; 43 Cal. 344, 48 Cal. 47; 47 Cal. 93, 134, 135.
r. Ah Chung, May 22nd, 1880.

Elisor—14 Cal. 123.

§ 227. When there are not competent jurors present to form a panel the court may direct the Sheriff, or an elisor chosen by the court, to summon a sufficient number of persons having the qualifications of jurors to complete the panel, from the body of the county, or city and county, and not from the jailers and the

or elisor shall summon the number so ordered accordingly and return the names to the court.

§ 228. An elisor who shall, by order of a court of record, summon persons to serve as jurors, shall be entitled to a reasonable compensation for his services, which must be fixed by the court and paid out of the county or city and county treasury, and out of the general fund thereof.

ARTICLE VI.

OF SUMMONING JURORS FOR COURTS NOT OF RECORD

§ 230. Jurors for Justices' or Police Courts.

§ 231. How to be summoned.

§ 232. Officer's return.

§ 230. When jurors are required in any of the Justices' Courts, or in any Police or other inferior court, they shall, upon the order of the Justice, or any one of the justices where there is more than one, or of the Judge thereof, be summoned by the Sheriff, constable, marshal, or policeman of the jurisdiction.

§ 231. Such jurors must be summoned from the persons competent to serve as jurors, residents of the city and county, township, city, or town in which such court has jurisdiction, by notifying them orally that they are summoned and of the time and place at which their attendance is required.

§ 232. The officer summoning such jurors shall, at the time fixed in the order for their appearance, return it to the court with a list of the persons summoned indorsed thereon.

ARTICLE VII.

OF SUMMONING JURIES OF INQUEST.

§ 233. How to be summoned.

§ 235. Juries of inquest shall be summoned by the officer before whom the proceedings in which they are to be had, or by any Sheriff, constable, or policeman from the persons competent to serve as jurors, residents of the county, or city and county, by notifying them that they are so summoned and of the time and place at which their attendance is required.

§ 238. Any juror summoned, who without reasonable excuse fails to attend, and compelled to attend; and the court may issue a fine not exceeding fifty dollars, upon may issue. If the juror was not personally served, a fine must not be imposed until upon cause an opportunity has been offered and heard.

ARTICLE IX.

OF IMPANNELING GRAND JURIES.

§ 241. Grand jury, when to be impaneled.

§ 242. How constituted.

§ 243. Manner of impanneling prescribed by law.

§ 241. Every Superior Court, whenever of the court, the public interests may require, make and file with the County Clerk of each county an order directing a jury to be impaneled, stating the number, which, in case of a county, not be less than twenty-five, nor more than twenty-five; in counties having less than three Superior Judges, shall be one grand jury drawn and impaneled each year, and in all counties having three or more Superior Judges, there shall be two grand juries impaneled in each year. Such order must designate the place at which the drawing will take place. The names of the jurors shall be drawn, the list of names of persons summoned as provided for drawing and impanneling jurors, and the names of any persons who are not to be impaneled upon the grand jury.

nineteen of such persons are present, the panel may be filled as provided in section two hundred and twenty-six of this Code. And whenever, of the persons summoned to complete a grand jury, more shall attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as above provided.

Special grand jury—47 Cal. 135.

§ 243. Thereafter such proceedings shall be had in impaneling the grand jury as are prescribed in part two of the Penal Code.

See Penal Code, secs. 894-901.

ARTICLE X.

OF IMPANNELED TRIAL JURIES IN COURTS OF RECORD.

§ 246. Clerk to call list of jurors summoned.

§ 247. Manner of impaneling prescribed in part two.

§ 246. At the opening of court on the day trial jurors have been summoned to appear, the Clerk shall call the names of those summoned, and the court may then hear the excuses of jurors summoned. The clerk shall then write the names of the jurors present and not excused on separate slips or ballots of paper, and fold such slips so that the names are concealed, and there, in the presence of the court, deposit the slips or ballots in a box, which must be kept sealed or locked until ordered by the court to be opened.

§ 247. Whenever thereafter a civil action is called by the court for trial, and a jury is required, such proceedings shall be had in impaneling the trial jury as are prescribed in part two of this Code. If the action be a criminal case, the jury shall be unpaneled as prescribed in the Penal Code.

Civil action—see secs. 600-604.

Criminal case—see Penal Code, secs. 1055-1068.

ARTICLE XI.

OF IMPANNELED TRIAL JURIES IN COURTS NOT OF RECORD.

§ 250. Proceedings in forming jury.

§ 251. Manner of impaneling.

§ 250. At the time appointed for a jury trial in Justice Police or other inferior courts, the list of jurors summoned must be called, and the names of those at-

tending and not excused must be written upon separate slips of paper, folded so as to conceal the names, and placed in a box, from which the trial jury must be drawn.

§ 251. Thereafter, if the action is a criminal one, the jury must be impaneled as provided in the Penal Code; if a civil one, as provided in part two of this Code.

See sec. 247.

ARTICLE XII.

OF IMPANNELING JURIES OF INQUEST.

§ 254. Manner of impanneling.

§ 254. The manner of impanneling juries of inquest is prescribed in the provisions of the different codes relating to such inquests.

CHAPTER IV. TRIAL BY JURY.

ART. I. FORMATION OF JURY. II. CONDUCT OF THE TRIAL. III. THE VERDICT.

ARTICLE I.

FORMATION OF THE JURY.

by, how drawn
challenges. Each party entitled to four peremptory challenges.
grounds of challenge.
challenges, how tried.
jury to be sworn.

2. When the action is called for trial by jury, the
must draw from the trial jury box of the court the
containing the names of the jurors, until the jury
pleted or the ballots are exhausted.

generally, sec. 190, and note: trial jury, secs. 193, 194.

by jury—conduct of, sec. 607 *et seq*: waiver of, sec. 631: ver-
dict, sec. 624 *et seq*.

jury box—sec. 246.

completed—43 Cal. 323.

3. Either party may challenge the jurors; but where
several parties on either side, they must join in
the challenge before it can be made. The challenges are to
the jurors, and are either peremptory or for cause.
Each party is entitled to four peremptory challenges. If
peremptory challenges are taken until the panel is full,
no more may be taken by the parties alternately, commence-
ing with the plaintiff. [In effect July 1st, 1874.]

challenges for cause—sec. 302, and note.

peremptory challenge, when taken—see EXAMINATION OF JU-
rors, *et seq*. criminal cases, 37 Cal. 678.

number of jurors—object of, 23 Cal. 376—extent of, 43 Cal. 323.

composition of jury—irregularity in, must be substantial, 9 Cal. 405; 9
Cal. 40.

4. Challenges for cause may be taken on one or
more of the following grounds:
Want of any of the qualifications prescribed by
law to render a person competent as a juror;

SEE APPENDIX—53A

2. Consanguinity or affinity within the fourth degree to any party;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party or surety on any bond or obligation for either party,

4. Having served as a juror or been a witness on a previous trial between the same parties, for the same case or action;

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

6. Having an unqualified opinion or belief as to the merits of the action, founded upon knowledge of its material facts, or of some of them;

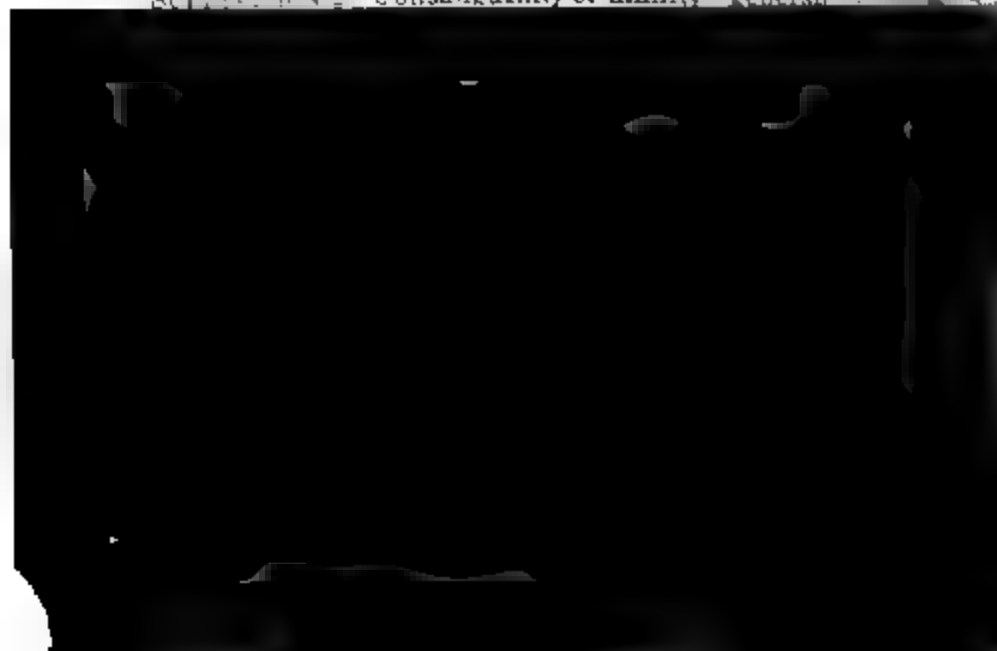
7. The existence of a state of mind in the juror evincing enmity against or bias to or against either party [to take effect July 1st, 1874.]

Challenge for cause, sufficiency of—*Specifying grounds*. 12 Cal. 108; criminal cases, 37 Cal. 277, 41 Cal. 57. *Objection, when to be made*. 1 Cal. 38; 18 Cal. 109.

GROUND'S OF CHALLENGE FOR CAUSE.

SUBDIVISION 1. Incompetency—secs. 198, 199, and notes. *See* note to sec. 4 *infra*, and 4* Cal. 348.

§ 198. 1. *Consanguinity or affinity* generally. *See* § 686.



6. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they each of them will well and truly try the matter in between —, the plaintiff and —, defendant, and render verdict according to the evidence administered of—see secs 2093-2097.

ARTICLE II.

CONDUCT OF THE TRIAL.

Order of proceedings on trial.
Charge to the jury. Court must furnish, in writing, upon request, the points of law contained therein.
Special instructions.
Law by jury of the premises.
 admonition when jury permitted to separate.
Jury may take with them certain papers.
Liberty to talk jury, how conducted.
Jury come into court for further instructions.
Proceedings in case a juror becomes sick.
When prevented from giving verdict, the cause may be again tried.
If the jury are absent court may adjourn from time to time.
Sealed verdict. Final adjournment discharges the jury.
Verdict, how declared. Form of Polling the jury.
Proceedings when verdict is informal.

7. When the jury has been sworn, the trial must be in the following order, unless the judge, for reasons, otherwise directs:

The plaintiff, after stating the issue and his case, produce the evidence on his part;

The defendant may then open his defense, and offer evidence in support thereof;

The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon the original case;

When the evidence is concluded, unless the case is referred to the jury on either side, or on both sides, in argument, the plaintiff must commence and may continue the argument;

If several defendants, having separate defenses, appear with different counsel, the court must determine their order in the evidence and argument;

The court may then charge the jury

on the proof, discretion of court, as to generally, sec. 2042; 37 Cal. 468. party control of, over, 8 Cal. 50, 15 Cal. 334; 44 Cal. 100. of evidence, secs. 1868-1870.

Section 1. Plaintiff's evidence—proof required, see sec. 2042.

Section 2. Defendant's evidence—see note to subd. 1.

TRIAL BY JURY.

SUBDIVISION 2. Rebutting evidence—*Burden of proof*, generally, see 1000a; as test of right to rebut, see 15 Cal. 199, 45 Cal. 614. *Ability*, as to see 205a, 41 Cal. 578. *Discretion of court*, as to recalling witness, see 2050, 41 Cal. 294. *Re-opening case*—Where amendment of complaint, 31 Cal. 608. Where cross-complaint, 49 Cal. 221. Recalling witness, see 2050, 45 Cal. 199. *Supplementary proof*, 6 Cal. 120, 30 Cal. 604, 39 Cal. 607, 42 Cal. 429, 47 Cal. 194, 520; 45 Cal. 614.

SUBDIVISION 4. Arguments—plaintiff opening and closing: 2d reading law, 41 Cal. 63.

SUBDIVISION 5. Several defendants—separate trials, 40 Cal. 28.

SUBDIVISION 6. Charging the jury—secs. 698, 699.

CONDUCT OF TRIAL.

Actions—consolidating, see 1044, register of, see 1021. **Amendments**—see 473 and notes. **Appeals**—see 936 et seq. **Arguments**—see 607, subd 4. **Case**, calling up—see 603, 609, and notes. **Compromise**—offer of, see 997, contempt, secs. 1309-1312. **Consequence**—see 560, 568. **Costs**—see 1021 et seq. **Court**—trial by, see 603. **Damages**—see 607, subd 5a, deliberation of jury, see 607, subd 5b. **Dismissal**—see 603, and see WAYT OF PROSECUTION. **Diversion**—see 10, 8 and 4 notes. **Errors**—of law, see 607, subd 5b. **Evidence**—secs. 1823, 2104. **Exceptions**—see 603 and notes. **Extensions of time**—see 1054. **Facts**, jury instructions to jury—generally, see 604a. **Findings**—see 603 and note. **Instructions**—disqualifications of, secs. 119-122. see 207, subd 4. **Judgment**—all, see 604a. **Jury trial**—secs. 600-623. **Justices**, clerk, see 604a. **Language of proceedings**—see 114. **Law**, new, see 1003 et seq. **Motions**—see 1003 et seq. **Notices**—see 1003 et seq.

Page 13 jury. Scope of, see Instructions, generally *supra* and Instructions, see also Construction of local 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 8

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Testimony on whole narrative dicto 45 Cal 34, 51

see note, *supra*. Useless—53 Cal. 430. Usual—see 2061, see also 2102. Vague—39 Cal. 690, and see TOO GENERAL.

§ 609. Where either party asks special instructions to be given to the jury, the court must either give such instruction, as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.

Instructions, disposition of—asking, granting, refusing, modifying, manner of passing on, see those heads under Special Instructions *infra*.

SPECIAL INSTRUCTIONS

Adding to—47 Cal. 93. Asking—6 Cal. 187, 16 Cal. 78, 49 Cal. 57, 53 Cal. 619, Williams v. Hartford Fire Ins. Co. March 29th, 1884, 4 Cal. C. L. J. 237. Disregarding—6 Cal. 197. Exceptions to—see notes. Granting—8 Cal. 340, 13 Cal. 172, 17 Cal. 143, 41 Cal. 6. Modifying—see ADDING TO, GRANTING, PASSING ON, OFFER, ASKING. Passing on—main text, 2 Cal. 173, 5 Cal. 450, 19 Cal. 683, 25 Cal. 400, 32 Cal. 280, 34 Cal. 101, 37 Cal. 154, 40 Cal. 50, 41 Cal. 186, see also ADDING TO, GRANTING, MODIFYING, REFUSING. Presenting—see ASKING. Proposed—6 Cal. 187, 29 Cal. 500. Refusal of time of, 25 Cal. 506. Refusal of proper—5 Cal. 478, 6 Cal. 525, 390, 9 Cal. 343, 13 Cal. 599, 29 Cal. 556, 32 Cal. 271, 36 Cal. 446, 47 Cal. 93, 49 Cal. 136, 53 Cal. 354, 630, People v. Smith, May 15th, 1884, 1 sup. op. 2 Cal. 385, 5 Cal. 11, read as follows:—curing, 8 Cal. 8, 30 Cal. 63, 50 Cal. 403, People v. Anderson, 22 Cal. 1, 1880, 5 Pac. C. L. J. 213, Steiner v. Eisen, March 24th, 1884, 22 Cal. J. 46. Time, presenting in—where many, 6 Cal. 187.

§ 610. When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any fact occurred, it may order them to be conducted, by a body, under the charge of an officer, to the place, and shall be shown to them by some person appointed by the court for that purpose. Where the jury are thus shown, no person, other than the person so appointed, shall be shown to them on any subject connected with the trial.

View of premises—19 Cal. 427, 49 Cal. 607, 50 Cal. 536, 53 Cal. 7.

§ 611. If the jury are permitted to separate during the trial or after the case is submitted, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be conversed with by any other person on any subject of the trial, and that it is their duty not to form or express an opinion until the case is finally submitted to them.

Temporary recess—question as to application, 23 Cal. 67.

§ 612. Upon retiring for deliberation, the jury shall take with them all papers which have been received in evidence.

CODE CIV. PROC.—12.

ence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

Inspection of documents—by, 36 Cal. 168.

§ 613. When the case is finally submitted to the jury, they may decide in court or retire for deliberation, if they retire, they must be kept together, in some convenient place, under charge of an officer, until at least three-fourths of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they or three-fourths of them are agreed upon a verdict; and he must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. [In effect March 10th 1880.]

Retiring for deliberation *Temporary separation*, 5 Cal. 275; 19 Cal. 37; 20 Cal. 433, 21 Cal. 337, 22 Cal. 348. *Influence of judge*, 25 Cal. 258.

Three-fourths—agreement of, *amdt.* 1880; see Const. Cal. art. 1, sec. 7.

§ 614. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the parties or counsel.

Information given—extent of, 45 Cal. 338; on non-judicial days, sec. 1, subd. 1.

Absence of attorneys—criminal cases, 5 Cal. 149; 37 Cal. 274.

§ 615. If, after the impanneling of the jury, and before verdict a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, another juror may be sworn and the trial begin anew; the jury may be discharged and a new jury taken or forward impannelled.

§ 616. In all cases where the jury are discharged, or excused from giving a verdict, by reason of accident or illness during the progress of the trial, or after the

from time to time, in respect to other cases, nevertheless open for every purpose case submitted to the jury until a verdict is rendered. The court may bring in a sealed verdict, at the opening of an agreement during a recess or the day. [In effect March 10th, 1880.]

Sealed verdict—bringing in, 12 Cal. 483.

Adjournment for term—effect of, before and after, 648. Abolition of terms, by Const. 1879, see sec. 648.

§ 618. When the jury, or three-fourths of the jury, agree upon a verdict, they must be called by the clerk, and their names called by the clerk, and the verdict must be read by the foreman; the verdict must be read by the foreman, and must be read by the jury, and the inquiry made whether it is complete. Either party may require the jury to be polled, if upon such inquiry or polling, one-fourth of the jurors disagree thereto, it is sent out again, but if no such disagreement, the verdict is complete and the jury discharged. [In effect March 10th, 1880.]

Three-fourths—agreement of, see sec. 613.

Verdict received—on non-judicial day, sec. 134.

Polling jury—20 Cal. 69.

Dissenting—more than one-fourth, amdt. 1880, sec. 648.

§ 619. When the verdict is announced, or insufficient in not covering the case, the court may bring in a sealed verdict, at the opening of an agreement during a recess or the day. [In effect March 10th, 1880.]

ARTICLE III.

THE VERDICT.

- § 624. General and special verdicts defined.
 § 625. When a general or special verdict may be rendered.
 § 626. Verdict in actions for recovery of money or on establishing counter-claim.
 § 627. Verdict in actions for the recovery of specific personal property.
 § 628. Entry of verdict.

§ 624. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and those conclusions of fact must be so presented, as that nothing shall remain to the court but to draw from them conclusions of law.

Verdict, scope of—controlled by pleadings and issues, 2 Cal. 183, 251, 6 Cal. 43, 33 Cal. 507, 41 Cal. 123. sufficient form, 25 Cal. 479, 40 Cal. 657; and as to amending, see sec. 473, and effect of amendment in sec. 740 Cal.; after trial, see generally, INTENDMENTS, sec. 53m; new trials on misdirection affecting, see 657 subd. 2 and note; joint defendants, claim for, 6 Cal. 197, 15 Cal. 27, 25 Cal. 123. waiver of informality in, 38 Cal. 57, 40 Cal. 403.

General verdict—14 Cal. 168, 15 Cal. 162, 25 Cal. 479, and see SCOPE OF VERDICT, *supra*.

Special verdict—sec. 625n.

§ 625. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing, upon all, or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the minutes. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

General verdict—see 624n.

Special verdict—Character of, 16 Cal. 113, 17 Cal. 299, 610, 18 Cal. 101; and see *Directed by court* 3 Cal. 306. *Special issues* 4 Cal. 6, 8 Cal. 10, 11 Cal. 487, 27 Cal. 360. *Change of verdict, from special to general*, 21 Cal. 639, 48 Cal. 508. *Special finding, effect on general verdict* 19 Cal. 124, 27 Cal. 489, 31 Cal. 178, and as to equity see 49 Cal. 126; 53 Cal. 630; *Effect, when special* 61 Cal. 61.

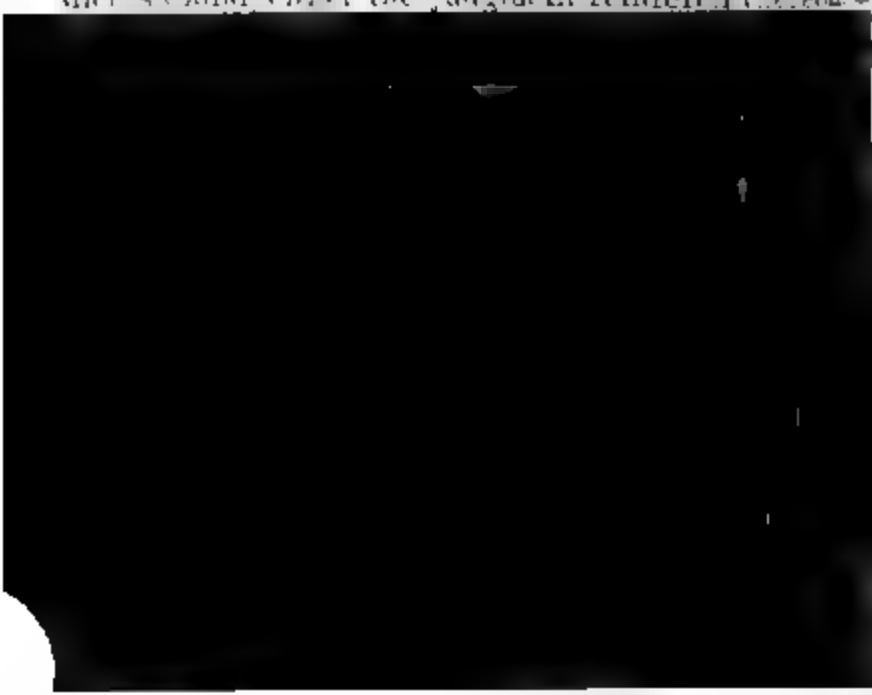
§ 626. When a verdict is found for the plaintiff, in action for the recovery of money, or for the defense when a counter-claim for the recovery of money is established, exceeding the amount of the plaintiff's claim established, the jury must also find the amount of recovery.

Amount of recovery—*Watson v. Damon*, March 3th, 1920, 5 Pa L. J. 97.

§ 627. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of plaintiff, or, if being in favor of the defendant, they find that he is entitled to a return thereof, must find value of the property, and, if so instructed, the value of specific portions thereof, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property. [In effect July 1st, 1874.]

Verdict in replevin—7 Cal. 569; 8 Cal. 448; 21 Cal. 274; 24 Cal. 12.

§ 628. Upon receiving a verdict, an entry must be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length, and where a special verdict is found, enter the judgment rendered thereon.



INSOLVENCY.

ARTICLE IX.

PENAL CLAUSES.

§ 56. From and after the taking effect of this act, if any debtor or insolvent shall, after the commencement of proceedings in insolvency, secrete or conceal any property belonging to his estate, or part with, conceal, or destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto, or remove, or cause to be removed, the same or any part thereof, with intent to prevent it from coming into the possession of the assignee in insolvency, or to hinder, impede, or delay his assignee in recovering or receiving the same, or make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate, with like intent, or shall spend any part thereof in gaming, or shall, with intent to defraud, willfully and fraudulently conceal from his assignee, or fraudulently or designedly omit from his schedule any property or effects whatsoever; or if in case any person having to his knowledge or belief proved a false or fictitious debt against his estate, he shall fail to disclose the same to his assignee within one month after coming to the knowledge or belief thereof, or shall attempt to account for any of his property by fictitious losses or expenses, or shall, within three months before the commencement of proceedings in insolvency, under the false pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels, with intent to defraud, or shall, with intent to defraud his creditors, within three months before the commencement of proceedings in insolvency, pawn, pledge or dispose of otherwise than by bona fide transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit

and remain unpaid for, he shall be deemed guilty of misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than three months nor more than two years.

Concealing property, etc.—see Penal Code, sec. 154.

Fraudulent dealing with books or writing—see Penal Code, sec. 132.

Fraud—sec. 49a; 19 Cal. 141.

Fraudulent preferences and transfers—sec. 55a.

ARTICLE X.

MISCELLANEOUS.

§ 57. If any debtor shall die after the order of adjudication, the proceedings shall be continued and concluded in like manner and with like validity and effect as if he had lived.

Continuance of proceedings—after death of party, compare Code Civ. Proc. sec. 385.

§ 58. Pending proceedings by or against any person, copartnership, or corporation, no Statute of Limitations of this State shall run against a claim which in its nature is provable against the estate of the debtor.

Limitations generally—see Code Civ. Proc. sec. 312a.

§ 59. Any creditor, at any stage in the proceedings, may be represented by his attorney or duly authorized agent.

Attorney—see Code Civ. Proc. sec. 715 et seq.

§ 60. It shall be the duty of the court having jurisdiction of the proceedings, to exempt and set apart for the use and benefit of said insolvent such real and personal property as is by law exempt from execution, and also to proceed in the manner as provided in section one thousand four hundred and sixty-five of the Code of Civil Procedure.

Property exempt from execution—see Code Civ. Proc. sec. 704 and notes.

§ 61. The filing of the petition by or against a debtor upon which an order of adjudication in insolvency may be made by the court, shall be deemed to be the commencement of proceedings in insolvency under this act.

§ 62. Words used in this act in the singular, shall include the plural, and in the plural, the singular. And the word "debtor" includes partnerships and corporations.

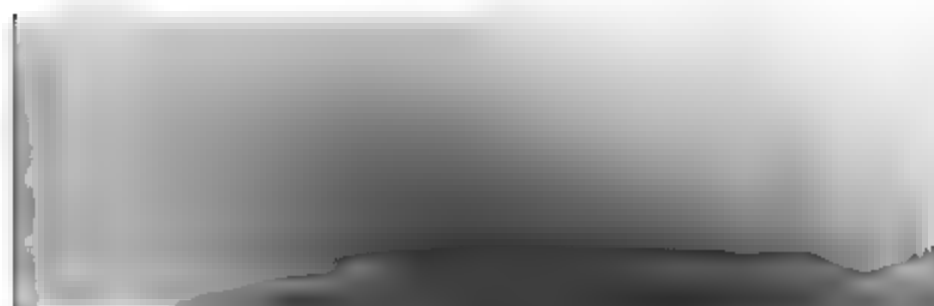
Meaning of words—compare Code Civ. Proc. sec. 704.

PART IV. OF EVIDENCE.

	GENERAL DEFINITIONS. §§ 1823-1839.
TITLE I.	OF GENERAL PRINCIPLES. §§ 1844-1870.
II.	KINDS AND DEGREES OF EVIDENCE. §§ 1875-1978.
III.	PRODUCTION OF EVIDENCE. §§ 1981-2054.
IV.	EFFECT OF EVIDENCE. § 2061.
V.	RIGHTS AND DUTIES OF WITNESSES. §§ 2064-2070.
VI.	EVIDENCE IN PARTICULAR CASES, AND GENERAL PROVISIONS. §§ 2074-2103.

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PENAL APPENDIX.—54.





OF EVIDENCE.

GENERAL DEFINITIONS AND DIVISIONS.

- 1823. Definition of evidence.
- 1824. Definition of proof.
- 1825. Definition of law of evidence.
- 1826. The degree of certainty required to establish facts.
- 1827. Four kinds of evidence specified.
- 1828. Several degrees of evidence specified.
- 1829. Original evidence defined.
- 1830. Secondary evidence defined.
- 1831. Direct evidence defined.
- 1832. Indirect evidence defined.
- 1833. Primary evidence defined.
- 1834. Partial evidence defined.
- 1835. Satisfactory evidence defined.
- 1836. Indispensable evidence defined.
- 1837. Conclusive evidence defined.
- 1838. Cumulative evidence defined.
- 1839. Corroborative evidence defined.

§ 1823. Judicial evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact.

Evidence—law of, see 1825; kinds of, see 1827; degrees of, see 1828 et seq.; relevancy of, secs. 1868, 1870; production of, see sec. 1825, subd. 3, note; value and effect of, see sec. 1825, subd. 5, note.

§ 1824. Proof is the effect of evidence, the establishment of a fact by evidence.

Definition of term—31 Cal. 201.

Proof—degree required, see 1828; order of, secs. 607, 7042; extent of, see 1867, 1869; limits of, secs. 1868, 1870; burden of, secs. 1869a, 1861; method of making, 31 Cal. 201.

§ 1825. The law of evidence, which is the subject of this part of the Code, is a collection of general rules established by law:

1. For declaring what is to be taken as true without proof.

2. For declaring the presumptions of law, both those which are disputable and those which are conclusive; and,

3. For the production of legal evidence;
 exclusion of whatever is not legal;
 and in certain cases, the value and effect

When, see sec. 1827, subd. 1.

- SUBDIVISION 2. Presumptions—secs. 1830, 1861-1863 and note.
 SUBDIVISION 3. Production of evidence—secs. 1861-1864.
 SUBDIVISION 4. Exclusion of evidence—secs. 1867, 1868.
 SUBDIVISION 5. Value and effect of evidence—sec. 1861; also see sec. 1828 *et seq.*

§ 1826. The law does not require demonstration, that is, such a degree of proof as, excluding possibility of error, produces absolute certainty, because such proof is rarely possible. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Proof—sec. 1824 and note.

§ 1827. There are four kinds of evidence:

1. The knowledge of the court;
2. The testimony of witnesses;
3. Writings;
4. Other material objects presented to the senses.

SUBDIVISION 1. Knowledge of the court—sec. 1873 and note.

SUBDIVISION 2. Witnesses—secs. 1878-1884.

SUBDIVISION 3. Writings—secs. 1887-1961.

SUBDIVISION 4. Other material objects—sec. 1954.

§ 1828. There are several degrees of evidence:

1. Primary and secondary;
2. Direct and indirect;
3. *Prima facie*, partial, satisfactory, indispensable, and conclusive. In effect July 1st, 1871 }

2. Indirect evidence is that which tends to establish fact in dispute by proving another, and which, true, does not of itself conclusively establish that which affords an inference or presumption of its fact. For example a witness proves an admission by a party to the fact in dispute. This proves a fact, from which the fact in dispute is inferred.

Indirect evidence—secs. 1957, 1963.

3. *Prima facie* evidence is that which suffices for proof of a particular fact, until contradicted and overruled by other evidence. For example the certificate of a recording officer is *prima facie* evidence of a record, but may afterward be rejected upon proof that there is no record. [In effect July 1st, 1874.]

Prima facie evidence—seal of corporation as, 52 Cal. 192.

Prima facie presumption—sec. 1963.

4. Partial evidence is that which goes to establish a particular fact, in a series tending to the fact in dispute, and which, if received, subject to be rejected as incompetent, is not connected with the fact in dispute by proof of its truth. For example on an issue of title to real property, evidence of the continued possession of a respondent is partial, for it is of a detached fact, which may or may not be afterward connected with the fact in dispute.

Partial evidence with the fact in dispute—sec. 1863.

5. That evidence is deemed satisfactory which produces moral certainty or conviction in an honest mind. Such evidence alone will justify a verdict. Evidence less than this is denominated slight evidence.

Slight evidence—to justify verdict, sec. 2061, subd. 5.

6. Indispensable evidence is that without which a particular fact cannot be proved.

Indispensable evidence—secs. 1967, 1974.

7. Conclusive or unanswerable evidence is that which the law does not permit to be contradicted. For example the record of a court of competent jurisdiction is conclusive evidence of the facts therein stated, unless contradicted by the parties to it.

Conclusive evidence—secs. 1903, 1962, 1976.

Conclusive evidence is additional evidence of the same point.

Conclusive evidence

OF THE GENERAL PRINCIPLES OF EVIDENCE.

- § 1844. One witness sufficient to prove a fact.
- § 1845. Testimony confined to personal knowledge.
- § 1846. Testimony to be in presence of persons.
- § 1847. Witness presumed to speak the truth.
- § 1848. One person not affected by acts of another.
- § 1849. Declarations of predecessor in title evidence.
- § 1850. Declarations which are a part of the transaction.
- § 1851. Evidence relating to third person.
- § 1852. Declaration of decedent evidence of pedigree.
- § 1853. Declaration of decedent evidence against interest.
- § 1854. When part of a transaction proved, the whole is proved.
- § 1855. Contents of writing, how proved.
- § 1856. An agreement reduced to writing deemed conclusive.
- § 1857. Construction of language relates to place.
- § 1858. Construction of statutes and instruments.
- § 1859. The intention of the Legislature or parties.
- § 1860. The circumstances to be considered.
- § 1861. Terms to be construed in their general acceptation.
- § 1862. Written words control those printed in a contract.
- § 1863. Persons skilled may testify to decipher characters.
- § 1864. Of two constructions, which preferred.
- § 1865. A written instrument construed as understood.
- § 1866. Construction in favor of natural right preferred.
- § 1867. Material allegations only to be proved.
- § 1868. Evidence confined to material allegations.
- § 1869. Affirmative only to be proved.
- § 1870. Facts which may be proved on trial.

§ 1844. The direct evidence of one witness, if not impeached, is entitled to full credit is sufficient for proof of perjury and treason.

One witness—witness, definition, sec. 1870.
sec. 1879 et seq.; two witnesses, sec. 1870.

GENERAL PRINCIPLES.

§§ 1347-50

presence and subject to the examination of all the parties, if they choose to attend and examine.

Witness—defined, sec. 1378.

Witnesses—competency of, sec. 1379 *et seq.*

Oath or affirmation—administration of, secs. 2033-2037

Examination of witnesses—secs. 2042-2054.

§ 1347. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

Witness—sec. 1378 *et seq.*

Presumed to speak the truth—sec. 1363, subd. 1; evidence of good character, sec. 2061.

Presumption repelled—manner of testifying, sec. 2061, subd. 2; character of testimony, sec. 2061, subd. 3; impeaching credit, secs. 2049, 2051, motives, hostility, 52 Cal. 380; contradictory evidence, sec. 2040.

Jury exclusive judges of credibility—sec. 2061.

§ 1348. The rights of a party cannot be prejudiced by declaration, act, or omission of another, except by one of a particular relation between them, therefore, proceedings against one cannot affect another. [In effect 1st, 1874.]

Particular relation—requisite, 2 Cal. 145; wife, where marriage in 9 Cal. 57; husband, crime of, not imputed to wife, 41 Cal. 637; agent, etc., sec. 1379, subd. 5; partners to firm, 20 Cal. 596; officer and master of vessel, 33 Cal. 61; attorney, 47 Cal. 44; declaration, etc., of another—when a misstatement, secs. 1849-1853.

§ 1349. Where, however, one derives title to real property from another, the declaration, act, or omission of the while holding the title, in relation to the property, once against the former

action of section—30 Cal. 473.

Actions of predecessor—admissible, 12 Cal. 163, 30 Cal. 439, 33 Cal. 51, 41 Cal. 294, pointing to the real property, 50 Cal. 473. Among the 11, 34 Cal. 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Where also the declaration, act, or omission of a third party, which is itself the fact in dispute, is introduced as a declaration, act, or omission of the third party.

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf of a book. The paper has a slightly textured appearance with some minor creases and discoloration, characteristic of old paper. The left edge of the page is bound into the book's spine, and the binding material is visible. The overall tone is warm and slightly yellowed, suggesting the age of the document.

§ 1852. The declaration, act, or omission of a family, who is a decedent, or out of a family, is also admissible as evidence of common ancestry in cases where, on questions of pedigree, such evidence is admissible.

Common reputation—on questions of ped.
ibid., 1.

Decedent's declaration against interest—see
260, 45 Cal. 137, 46 Cal. 610, 47 Cal. 342 entries and
1946.

§ 1854. When part of an act, declaration, or writing is given in evidence the whole on the same subject may be received.

1. Where the original has been lost or destroyed, in which case proof of the loss or destruction must first be made.
 2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.
 3. When the original is a record or other document in the custody of a public officer.
 4. When the original has been recorded, and a certified copy of the record is made evidence by this Code or other statute.
 5. When the original consists of numerous accounts or other documents, which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.
- In the cases mentioned in subdivisions three and four, copy of the original or of the record must be produced. In those mentioned in subdivisions one and two, either a copy or oral evidence of the contents. [In effect July 1st, 1894.]

Nature of provision—3 Cal. 420, 10 Cal. 126.

Contents of writing—showing permissible, secs. 1937, 1960; 5 Cal. 1 Cal. 33, 11 Cal. 84, 43 Cal. 162, 45 Cal. 269, 50 Cal. 253.

SUBDIVISION 1. Original lost or destroyed—proof requisite, 3 Cal. 420, 10 Cal. 126, 13 Cal. 640. denial of search unsuccessful, 5 Cal. 180, 17 Cal. 60, 18 Cal. 60, 19 Cal. 134, 15 Cal. 63, 37 Cal. 369, 19 Cal. 683, 20 Cal. 66, 30 Cal. 360, 13 Cal. 321, 4 Cal. 623, 17 Cal. 603, 4 Cal. 80, 19 Cal. 658, 19 Cal. 64, 27 Cal. 54. secondary evidence admitted, 8 Cal. 40, 19 Cal. 11, 15 Cal. 50, 22 Cal. 50, 26 Cal. 240, 51 Cal. recorder's book as evidence, 17 Cal. 41.

SUBDIVISION 2. Original in possession of opponent—notice to produce, secs. 1938, 1941. 12 Cal. 40, 15 Cal. 63. secondary evidence admitted, 9 Cal. 11, 12 Cal. 405, 23 Cal. 584. denial of existence need not be proved, sec. 1969.

SUBDIVISION 3. Public records: 7 Cal. 110, 288, 12 Cal. 20, 18 Cal. 101. writings generally, secs. 1892, 1926.

SUBDIVISION 4. Original on record—certified copy admissible, 1 Cal. 47, 6 Cal. 448, 37 Cal. 306, 12 Cal. 608, 25 Cal. 122, 27 Cal. 28, 38 Cal. 90, 44.

1856 When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing those terms, and therefore the fact can be proved by the parties and their representatives or successors in interest, no evidence of the terms of the agreement being required in the contents of the writing, except in the following cases:

1. Where a mistake or imperfection of the writing is put in issue in the pleadings.
2. Where the validity of the agreement is the fact in dis-

cludes deeds and wills, and other
ties.

Parol evidence inadmissible—to vary or
ment, Civil Code, sec. 166; 2 Cal 3, 4 Cal 33;
10 Cal 288, 12 Cal 17, 13 Cal 354, 22 Cal 135; 8
Cal 514, 43 Cal 359, 50 Cal 55, 51 Cal 341; 83
several negotiations Civil Code, sec. 167; 2
Cal 335, 43 Cal 153. Contract must be complete;
34 Cal 112, 37 Cal 437; recitals in written inst.
1982, subd. 2 and notes; rule confined to part
under them, 50 Cal 256.

Parol evidence—admissible, alterations
sec. 1982, 48 Cal 147; ambiguity, to explain, 11
sec. surrounding circumstances, consideration
subd. 2; 48 Cal 97, and, see mortgage; C
waiver; fraud, to establish, see Civil Code, 2
perfection, to correct, sec. 158, subd. 1, *supra*;
Cal 298; 13 Cal 526, 17 Cal 55, 19 Cal 606; 23
Cal 600, 48 Cal 229, 50 Cal 253, 51 Cal 1. Mon
ago intended as, sec. 741, 13 Cal 116, 15 Cal
603, 20 Cal 15, 38 Cal 29, 41 Cal 42. Receipt, 1
Cal 44. Revision, and reformation of contract,
3395-3402, 21 Cal 22, 13 Cal 29, 43 Cal 79, 48 C
circumstances, to show, see husband notes, 61
Cal 12; trust, or a sense of, to show, 20 Cal 12.
validity of agreement controverted, *see* here, 8
48 Cal 69, 50 Cal 65. Waiver or discharge, to
156, 30 Cal 547, 39 Cal 153, 50 Cal 9, 51 Cal 166.

§ 1857. The language of a writing
according to the meaning it bears in
cution, unless the parties have refer
place.

Interpretation of contract—*lex loci*, Civil C

§ 1858. In the construction of

latent, the latter is paramount to the former. So a particular intent will control a general one, that is incon-

repeal of statutes *Amendments and conflicting statutes see*

The first of a series of 14 and 44 tests of 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000, 1002, 1004, 1006, 1008, 1010, 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1028, 1030, 1032, 1034, 1036, 1038, 1040, 1042, 1044, 1046, 1048, 1050, 1052, 1054, 1056, 1058, 1060, 1062, 1064, 1066, 1068, 1070, 1072, 1074, 1076, 1078, 1080, 1082, 1084, 1086, 1088, 1090, 1092, 1094, 1096, 1098, 1100, 1102, 1104, 1106, 1108, 1110, 1112, 1114, 1116, 1118, 1120, 1122, 1124, 1126, 1128, 1130, 1132, 1134, 1136, 1138, 1140, 1142, 1144, 1146, 1148, 1150, 1152, 1154, 1156, 1158, 1160, 1162, 1164, 1166, 1168, 1170, 1172, 1174, 1176, 1178, 1180, 1182, 1184, 1186, 1188, 1190, 1192, 1194, 1196, 1198, 1200, 1202, 1204, 1206, 1208, 1210, 1212, 1214, 1216, 1218, 1220, 1222, 1224, 1226, 1228, 1230, 1232, 1234, 1236, 1238, 1240, 1242, 1244, 1246, 1248, 1250, 1252, 1254, 1256, 1258, 1260, 1262, 1264, 1266, 1268, 1270, 1272, 1274, 1276, 1278, 1280, 1282, 1284, 1286, 1288, 1290, 1292, 1294, 1296, 1298, 1300, 1302, 1304, 1306, 1308, 1310, 1312, 1314, 1316, 1318, 1320, 1322, 1324, 1326, 1328, 1330, 1332, 1334, 1336, 1338, 1340, 1342, 1344, 1346, 1348, 1350, 1352, 1354, 1356, 1358, 1360, 1362, 1364, 1366, 1368, 1370, 1372, 1374, 1376, 1378, 1380, 1382, 1384, 1386, 1388, 1390, 1392, 1394, 1396, 1398, 1400, 1402, 1404, 1406, 1408, 1410, 1412, 1414, 1416, 1418, 1420, 1422, 1424, 1426, 1428, 1430, 1432, 1434, 1436, 1438, 1440, 1442, 1444, 1446, 1448, 1450, 1452, 1454, 1456, 1458, 1460, 1462, 1464, 1466, 1468, 1470, 1472, 1474, 1476, 1478, 1480, 1482, 1484, 1486, 1488, 1490, 1492, 1494, 1496, 1498, 1500, 1502, 1504, 1506, 1508, 1510, 1512, 1514, 1516, 1518, 1520, 1522, 1524, 1526, 1528, 1530, 1532, 1534, 1536, 1538, 1540, 1542, 15

construction and interpretation of 15 Cal. 21, 17 Cal. 46, 22 Cal. 136, 25 Cal. 175, 26 Cal. 85, 27 Cal. 401, 41 Cal. 48, 44 Cal. 171, 42 Cal. 45, 53 Cal. 63, 54 Cal. 141, 55 Cal. 141, 56 Cal. 141, 57 Cal. 141, 58 Cal. 141, 59 Cal. 141, 60 Cal. 141, 61 Cal. 141, 62 Cal. 141, 63 Cal. 141, 64 Cal. 141, 65 Cal. 141, 66 Cal. 141, 67 Cal. 141, 68 Cal. 141, 69 Cal. 141, 70 Cal. 141, 71 Cal. 141, 72 Cal. 141, 73 Cal. 141, 74 Cal. 141, 75 Cal. 141, 76 Cal. 141, 77 Cal. 141, 78 Cal. 141, 79 Cal. 141, 80 Cal. 141, 81 Cal. 141, 82 Cal. 141, 83 Cal. 141, 84 Cal. 141, 85 Cal. 141, 86 Cal. 141, 87 Cal. 141, 88 Cal. 141, 89 Cal. 141, 90 Cal. 141, 91 Cal. 141, 92 Cal. 141, 93 Cal. 141, 94 Cal. 141, 95 Cal. 141, 96 Cal. 141, 97 Cal. 141, 98 Cal. 141, 99 Cal. 141, 100 Cal. 141.

§ 1860. For the proper construction of an instrument, the circumstances under which it was made, the situation of the subject of the instrument, and of ties to it, may also be shown, so that the judge is in the position of those whose language he is to construe.

Construction of instruments: see 1850.

Surrounding circumstances may be shown, Civil Code 10 Cal. 1, 50 Cal. 1, 51 Cal. 1, 52 Cal. 1, 53 Cal. 1, 54 Cal. 1, 55 Cal. 1, 56 Cal. 1, 57 Cal. 1, 58 Cal. 1, 59 Cal. 1, 60 Cal. 1, 61 Cal. 1, 62 Cal. 1, 63 Cal. 1, 64 Cal. 1, 65 Cal. 1, 66 Cal. 1, 67 Cal. 1, 68 Cal. 1, 69 Cal. 1, 70 Cal. 1, 71 Cal. 1, 72 Cal. 1, 73 Cal. 1, 74 Cal. 1, 75 Cal. 1, 76 Cal. 1, 77 Cal. 1, 78 Cal. 1, 79 Cal. 1, 80 Cal. 1, 81 Cal. 1, 82 Cal. 1, 83 Cal. 1, 84 Cal. 1, 85 Cal. 1, 86 Cal. 1, 87 Cal. 1, 88 Cal. 1, 89 Cal. 1, 90 Cal. 1, 91 Cal. 1, 92 Cal. 1, 93 Cal. 1, 94 Cal. 1, 95 Cal. 1, 96 Cal. 1, 97 Cal. 1, 98 Cal. 1, 99 Cal. 1, 100 Cal. 1.

§ 1861. The terms of a writing are presumed to have been used in their primary and general acceptation; evidence is nevertheless admissible that they have a technical or otherwise peculiar signification, and used and understood in the particular instance, in case the agreement must be construed accordingly.

Peculiar signification of terms may be shown, 14 Cal. 624, 17 Cal. 141, compare Civil Code, secs. 1644, 1645.

§ 1862. When an instrument consists partly of words and partly of a printed form, and the two are inconsistent, the former controls the latter.

Compare Civil Code, sec. 1651.

§ 1863. When the characters in which an instrument is written are difficult to be deciphered, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters, who understand the language, is admissible to decipher the characters or the meaning of the language.

See—sec. 1870, subds. 9, 10, and notes.

§ 1864. When the terms of an agreement are intended in a different sense by the different parties, that sense is to prevail against either party, if it is supposed the other understood it, and if the instructions of a provision are otherwise construed.

be taken which is most favorable to the party in
for the provision was made.

Civil Code, sees 1643, 1654

A written notice, as well as every other writ-
be construed according to the ordinary accept-
terms. Thus, a notice to the drawers or in-
a bill of exchange or promissory note, that it
protested for want of acceptance or payment,
held to import that the same has been duly pro-
acceptance or payment, and the same refused,
the holder looks for payment to the person to
notice is given

acceptation—see sec 1861; compare Civil Code, sec 1644.
dishonor, Civil Code, sec 3143, 4 Cal. 213; 8 Cal. 626, 14 Cal.
779.

When a statute or instrument is equally sus-
of two interpretations, one in favor of natural
the other against it, the former is to be adopted.

None but a material allegation need be proved
allegation—defined, sec. 463. In complaint, see Code,
sec. 426a, 43 Cal. 413; not controverted, sec. 462

Evidence must correspond with the substance
material allegations, and be relevant to the question
Collateral questions must therefore be avoid-
however, within the discretion of the court to
quarry into a collateral fact, when such fact is di-
connected with the question in dispute, and is es-
sential to its proper determination, or when it affects the
of a witness.

Evidence between evidence and allegations—23 Cal. 67;
secs. 469-471; tender cannot be proven unless pleaded, 53

evidence—required, 4 Cal. 220, 21 Cal. 23, 27 Cal. 422, 30
Cal. 434, 645; *Smith v. East Branch M Co*, Feb. 12th, 1880, 4
Cal. 462; a full and complete evidence under requirement, sec. 1870 and
action or exception to evidence, sec. 646a

fact—connecting, sec 1870 and notes, 51 Cal. 75, *Bancroft*
Feb. 4th, 1882, 4 Pac. C. L. J. 545; entirely irrelevant, 49
Cal. 225, 605, 53 Cal. 735; credibility of witness, secs. 1847
64, 16.

Each party must prove his own affirmative al-
Evidence need not be given in support of a neg-
ation, except when such negative allegation is a
al part of the statement of the right or title
cause of action or defense is founded, nor ex-
when the allegation is a denial of the exist-
APPENDIX.—55.

of a document, the custody of which belongs to the opposite party.

Affirmative allegations—admitted facts need not be proved 2 Cal 225; 35 Cal 306, 41 Cal 127, 137, 42 Cal 227, 43 Cal 20, 21; affirmative answer unproven disregarded 51 Cal 41; *Boyd v. Boyd*, 138 Cal 682, 31 Cal 161, 5 Cal 31; *Dougherty v. Hume*, 138 Cal 511, 138 Cal 511, 51 Cal 8; admission on pleadings, 31 Cal 41; *Boyd v. Boyd*, 138 Cal 682, 31 Cal 161, 5 Cal 31, 51 Cal 21, 52 Cal 21; *Boyd v. Boyd*, 138 Cal 682, 31 Cal 161, 5 Cal 31, 51 Cal 21, 52 Cal 21.

Negative allegation—some evidence required, 26 Cal 61, 27 Cal 61, 28 Cal 61, 29 Cal 61, 30 Cal 61, 31 Cal 61, 32 Cal 61, 33 Cal 61, 34 Cal 61, 35 Cal 61, 36 Cal 61, 37 Cal 61, 38 Cal 61, 39 Cal 61, 40 Cal 61, 41 Cal 61, 42 Cal 61, 43 Cal 61, 44 Cal 61, 45 Cal 61, 46 Cal 61, 47 Cal 61, 48 Cal 61, 49 Cal 61, 50 Cal 61, 51 Cal 61, 52 Cal 61, 53 Cal 61, 54 Cal 61, 55 Cal 61, 56 Cal 61, 57 Cal 61, 58 Cal 61, 59 Cal 61, 60 Cal 61, 61 Cal 61, 62 Cal 61, 63 Cal 61, 64 Cal 61, 65 Cal 61, 66 Cal 61, 67 Cal 61, 68 Cal 61, 69 Cal 61, 70 Cal 61, 71 Cal 61, 72 Cal 61, 73 Cal 61, 74 Cal 61, 75 Cal 61, 76 Cal 61, 77 Cal 61, 78 Cal 61, 79 Cal 61, 80 Cal 61, 81 Cal 61, 82 Cal 61, 83 Cal 61, 84 Cal 61, 85 Cal 61, 86 Cal 61, 87 Cal 61, 88 Cal 61, 89 Cal 61, 90 Cal 61, 91 Cal 61, 92 Cal 61, 93 Cal 61, 94 Cal 61, 95 Cal 61, 96 Cal 61, 97 Cal 61, 98 Cal 61, 99 Cal 61, 100 Cal 61.

SUFFICIENCY OF EVIDENCE IN VARIOUS CASES

Breach of promise of marriage—*Hanks v. Naglee*, Dec 30, 1881, 4 Pac. C. L. J. 49, *Holmgren v. Boulton*, Feb 7, 1880, 4 Pac. C. L. J. 52. **Carrier**—in fact of rule of 23 Cal 537. **Certificate of purchase**—see 19 Cal 127, 43 Cal 126, 50 Cal 159. **Contract**—30 Cal 127, 31 Cal 127, 32 Cal 127, 33 Cal 127, 34 Cal 127, 35 Cal 127, 36 Cal 127, 37 Cal 127, 38 Cal 127, 39 Cal 127, 40 Cal 127, 41 Cal 127, 42 Cal 127, 43 Cal 127, 44 Cal 127, 45 Cal 127, 46 Cal 127, 47 Cal 127, 48 Cal 127, 49 Cal 127, 50 Cal 127, 51 Cal 127, 52 Cal 127, 53 Cal 127, 54 Cal 127, 55 Cal 127, 56 Cal 127, 57 Cal 127, 58 Cal 127, 59 Cal 127, 60 Cal 127, 61 Cal 127, 62 Cal 127, 63 Cal 127, 64 Cal 127, 65 Cal 127, 66 Cal 127, 67 Cal 127, 68 Cal 127, 69 Cal 127, 70 Cal 127, 71 Cal 127, 72 Cal 127, 73 Cal 127, 74 Cal 127, 75 Cal 127, 76 Cal 127, 77 Cal 127, 78 Cal 127, 79 Cal 127, 80 Cal 127, 81 Cal 127, 82 Cal 127, 83 Cal 127, 84 Cal 127, 85 Cal 127, 86 Cal 127, 87 Cal 127, 88 Cal 127, 89 Cal 127, 90 Cal 127, 91 Cal 127, 92 Cal 127, 93 Cal 127, 94 Cal 127, 95 Cal 127, 96 Cal 127, 97 Cal 127, 98 Cal 127, 99 Cal 127, 100 Cal 127. **Divorce**—51 Cal 20. **Ejectment**—14 Cal 41, 15 Cal 41, 16 Cal 41, 17 Cal 41, 18 Cal 41, 19 Cal 41, 20 Cal 41, 21 Cal 41, 22 Cal 41, 23 Cal 41, 24 Cal 41, 25 Cal 41, 26 Cal 41, 27 Cal 41, 28 Cal 41, 29 Cal 41, 30 Cal 41, 31 Cal 41, 32 Cal 41, 33 Cal 41, 34 Cal 41, 35 Cal 41, 36 Cal 41, 37 Cal 41, 38 Cal 41, 39 Cal 41, 40 Cal 41, 41 Cal 41, 42 Cal 41, 43 Cal 41, 44 Cal 41, 45 Cal 41, 46 Cal 41, 47 Cal 41, 48 Cal 41, 49 Cal 41, 50 Cal 41, 51 Cal 41, 52 Cal 41, 53 Cal 41, 54 Cal 41, 55 Cal 41, 56 Cal 41, 57 Cal 41, 58 Cal 41, 59 Cal 41, 60 Cal 41, 61 Cal 41, 62 Cal 41, 63 Cal 41, 64 Cal 41, 65 Cal 41, 66 Cal 41, 67 Cal 41, 68 Cal 41, 69 Cal 41, 70 Cal 41, 71 Cal 41, 72 Cal 41, 73 Cal 41, 74 Cal 41, 75 Cal 41, 76 Cal 41, 77 Cal 41, 78 Cal 41, 79 Cal 41, 80 Cal 41, 81 Cal 41, 82 Cal 41, 83 Cal 41, 84 Cal 41, 85 Cal 41, 86 Cal 41, 87 Cal 41, 88 Cal 41, 89 Cal 41, 90 Cal 41, 91 Cal 41, 92 Cal 41, 93 Cal 41, 94 Cal 41, 95 Cal 41, 96 Cal 41, 97 Cal 41, 98 Cal 41, 99 Cal 41, 100 Cal 41. **Force**—43 Cal 61, 50 Cal 200, 21, 51 Cal 18, 495, 53 Cal 362. **Forfeiture and detainer**—48 Cal 361. **Fraud**—50 Cal 243, 348. **General principles of evidence**, see 1828 et seq; proof required, 5 Cal 127, 137, 147, 157, 167, 177, 187, 197, 207, 217, 227, 237, 247, 257, 267, 277, 287, 297, 307, 317, 327, 337, 347, 357, 367, 377, 387, 397, 407, 417, 427, 437, 447, 457, 467, 477, 487, 497, 507, 517, 527, 537, 547, 557, 567, 577, 587, 597, 607, 617, 627, 637, 647, 657, 667, 677, 687, 697, 707, 717, 727, 737, 747, 757, 767, 777, 787, 797, 807, 817, 827, 837, 847, 857, 867, 877, 887, 897, 907, 917, 927, 937, 947, 957, 967, 977, 987, 997, 1007. **Malicious prosecution**—8 Cal 217, 2 Cal 64, 44 Cal 114, 50 Cal 200, 51 Cal 127. **Marriage**—see 1869, 61 Cal 50, 47 Cal 61, breach of promise that is *illegitima*. **Money paid—action for**, 53 Cal 8, 54 Cal 8, 55 Cal 8, 56 Cal 8, 57 Cal 8, 58 Cal 8, 59 Cal 8, 60 Cal 8, 61 Cal 8, 62 Cal 8, 63 Cal 8, 64 Cal 8, 65 Cal 8, 66 Cal 8, 67 Cal 8, 68 Cal 8, 69 Cal 8, 70 Cal 8, 71 Cal 8, 72 Cal 8, 73 Cal 8, 74 Cal 8, 75 Cal 8, 76 Cal 8, 77 Cal 8, 78 Cal 8, 79 Cal 8, 80 Cal 8, 81 Cal 8, 82 Cal 8, 83 Cal 8, 84 Cal 8, 85 Cal 8, 86 Cal 8, 87 Cal 8, 88 Cal 8, 89 Cal 8, 90 Cal 8, 91 Cal 8, 92 Cal 8, 93 Cal 8, 94 Cal 8, 95 Cal 8, 96 Cal 8, 97 Cal 8, 98 Cal 8, 99 Cal 8, 100 Cal 8. **Negligence**—50 Cal 54, 541, 53 Cal 60, 54 Cal 45. **Possession**—generally, 19 Cal 126, 21 Cal 113, 31 Cal 41, 32 Cal 41, 33 Cal 41, 34 Cal 41, 35 Cal 41, 36 Cal 41, 37 Cal 41, 38 Cal 41, 39 Cal 41, 40 Cal 41, 41 Cal 41, 42 Cal 41, 43 Cal 41, 44 Cal 41, 45 Cal 41, 46 Cal 41, 47 Cal 41, 48 Cal 41, 49 Cal 41, 50 Cal 41, 51 Cal 41, 52 Cal 41, 53 Cal 41, 54 Cal 41, 55 Cal 41, 56 Cal 41, 57 Cal 41, 58 Cal 41, 59 Cal 41, 60 Cal 41, 61 Cal 41, 62 Cal 41, 63 Cal 41, 64 Cal 41, 65 Cal 41, 66 Cal 41, 67 Cal 41, 68 Cal 41, 69 Cal 41, 70 Cal 41, 71 Cal 41, 72 Cal 41, 73 Cal 41, 74 Cal 41, 75 Cal 41, 76 Cal 41, 77 Cal 41, 78 Cal 41, 79 Cal 41, 80 Cal 41, 81 Cal 41, 82 Cal 41, 83 Cal 41, 84 Cal 41, 85 Cal 41, 86 Cal 41, 87 Cal 41, 88 Cal 41, 89 Cal 41, 90 Cal 41, 91 Cal 41, 92 Cal 41, 93 Cal 41, 94 Cal 41, 95 Cal 41, 96 Cal 41, 97 Cal 41, 98 Cal 41, 99 Cal 41, 100 Cal 41. **Power of attorney**—23 Cal 295, 550. **Trespass**—50 Cal 41, 42, 43.

§ 1870. In conformity with the preceding provisions evidence may be given upon a trial of the following facts:

1. The precise fact in dispute;
2. The act, declaration, or omission of a party in evidence against such party;
3. An act or declaration of another, in the presence and within the observation of a party, and his connection thereto;
4. The act or declaration, verbal or written, of a deceased person in respect to the relationship of marriage, or death of any person related by blood to such deceased person; the act or declaration of a deceased person in respect to his real property; and also in criminal cases the act or declaration of a dying person in the sense of impending death, respecting the cause of death;
5. After proof of a partnership or agency the declaration of a partner or agent of the party.

scope of the partnership or agency, and during its existence. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

6. After proof of a conspiracy, the act or declaration of a conspirator against his coconspirator, and relating to the conspiracy;

7. The act, declaration, or omission forming part of a transaction, as explained in section eighteen hundred and fifty;

8. The testimony of a witness deceased or out of the jurisdiction, or unable to testify, given in a former action between the same parties, relating to the same matter;

9. The opinion of a witness respecting the identity or handwriting of a person, when he has knowledge of the person or handwriting, his opinion on a question of science, art, or trade, when he is skilled therein;

10. The opinion of a subscribing witness to a writing, the validity of which is in dispute, respecting the mental capacity of the signer, and the opinion of an intimate acquaintance respecting the mental sanity of a person, the reason for the opinion being given.

11. Common reputation existing previous to the controversy, respecting facts of a public or general interest more than forty years old, and in cases of pedigree and boundary.

12. Usage, to explain the true character of an act, contract, or instrument, where such true character is not otherwise plain, but usage is never admissible, except as an instrument of interpretation.

13. Monuments and inscriptions in public places, as evidence of common reputation, and entries in family bibles, or other family books or charts, engravings on rings, family portraits, and the like, as evidence of pedigree.

14. The contents of a writing, when oral evidence thereof is admissible.

15. Any other facts from which the facts in issue are presumed or are logically inferable;

16. Such facts as serve to show the credibility of a witness, as explained in section eighteen hundred and forty-seven.

Relevant evidence required—sec. 1868 and notes.

RELEVANT EVIDENCE.

Subd. 1. Precise fact—in dispute, kinds of evidence, see 1871 and notes. Subd. 2. Admissions—cont'd by, 1871, 4., 1871, 634, 34, 180, 50 Cal. 434; acquiescence by sec. note to subd. 3, *infra*; 13 Cal. 224, 1871, 504, 1871, 4., acknowledging, 1871, 224, 1871, 505; assessment, 35 Cal. 684; compromise, not by offer to, sec. 2078; counsel, by,

Cal. 79; 22 Cal. 271; entries by, sec 1946 and notes, stopped by 1942, subd 3 and note, pleadings in 14 Cal. 39, 34 Cal. 39, 39 Cal. 47, Cal. 49 and see under AFFIRMATIVE ALLEGATIONS, 39 Cal. 47, 49 and advertisement by agent 25, 30 Cal. 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.


EVIDENCE ADMISSIBLE IN PARTICULAR

Account 13 Cal. 47, 30 Cal. 10, Amended complaint
 Answer—13 Cal. 47, 10 Cal. 10, 10 Cal. 10, 10 Cal. 10
 Case of, Williams v. Hartford Fire Ins. Co., 10 Cal. 10

7. Conversion—15 Cal 412, 16 Cal. 82. Corporation—50 Cal. loss demand—see 410. Damages—1 Cal 351, 5 Cal 414; 6 Cal. 14 Cal 454, 18 Cal 600, 25 Cal 379. Debris—18 Cal 470. Es- Political Code, see 412. Exemptions—15 Cal 266. Forcible etc. 27 Cal 533, 28 Cal 552. Fraud 7 Cal. 311, 12 Cal 463, 15 23 Cal 251, 31 Cal 100. Bancroft & Heringfi, Feb. 4th, 1880, 4 L. J. 500. Indorsement—15 Cal 121. Land cases—ejectment, 9; 10 Cal 470, 15 Cal 240, 21 Cal 211, 24 Cal 124, 26 Cal 119, 23 30 Cal 250, 65, 41 Cal 265, 44 Cal 353, 46 Cal 54, 47 Cal 181, Cal. 114, 40, 41 Cal 50, 50 Cal 64, 142, 53 Cal 39, 436. Forci- try, 37 Cal 60. Mexican grant, 29 Cal. 32. Chapman & Quinn, 13th, 1880, 5 Pac. C. L. J. 12; mining claims, 36 Cal 214. Accessory actions generally—23 Cal 50, 21 Cal 293, 23 Cal 264, Cal 250, 29 Cal 47, 30 Cal 323, 37 Cal 380, 40 Cal 240, 43 Cal 344 Cal 49, 48 Cal 178, 340, 50 Cal 155. public lands, 27 Cal 1008, 402, 31 Cal 40, 37 Cal 37, 47 Cal 155, 43 Cal 240, 50 Cal Chapman & Quinn, March 13th, 1880, 5 Pac. C. L. J. 102, Knight vs, March 18th, 1880, 5 Pac. C. L. J. 116. quieting title, 28 Cal Cal 504, 41 Cal 284, Wilson & Madison et al, April 25th 1880, 5 L. J. 340. Litch and s et al, see 411, 30 Cal 74, 44 Cal 641; 76. Limitations Statute of 51 Cal. 21. Malicious prosecu- 3 Cal 83; 35 Cal 377, 31 Cal 485, 44 Cal 600. Marriage—breach of 47 Cal 14. Negligence 27 Cal 425, 35 Cal 247 534, 30 Cal. 40 Cal 274, 43 Cal 437, 44 Cal 543, 45 Cal 324, 48 Cal 426, 50 128. Note 50 Cal 162. Notice—constructive, 12 Cal 241. Serv- ation for, 24 Cal 379, 26 Cal 305, 42 Cal 473, 45 Cal 256; 46 Cal. Cal 227. Tax suits—53 Cal 233. Trespass—45 Cal. 640.

TITLE II.

Of the Kinds and Degrees of Evidence.

- CHAP. I.** Knowledge of the court, § 1875.
II. Witnesses, §§ 1878-1884.
III. Writings, §§ 1887-1951.
IV. Material objects presented to the senses, *et*
than writings, § 1954.
V. Indirect evidence, §§ 1957-1963.
VI. Indispensable evidence §§ 1967-1974.
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CHAPTER I.

KNOWLEDGE OF THE COURT.

Certain facts of general notoriety assumed to be true. Specification of such facts

1875. Courts take judicial notice of the following

The true signification of all English words and
phrases, and of all legal expressions,

Whatever is established by law,

Public and private official acts of the legislative, ex-
ecutive, and judicial departments of this State and of the
United States,

The seals of all the courts of this State and of the
United States,

The accession to office and the official signatures and
seals of the principal officers of government in
legislative, executive, and judicial departments of this
State and of the United States,

The existence, title, national flag, and seal of every
foreign sovereign recognized by the executive power of
the United States

The seals of courts of admiralty and maritime juris-
diction, and of notaries public,

The laws of nature, the measure of time, and the geo-
graphical divisions and political history of the world.

All these cases the court may resort for its aid to ap-
propriate books or documents of reference.

JUDICIAL NOTICE.

1. Meaning of English words and phrases, etc.—41 Cal 477;

399; 51 Cal 49. Subd. 2. Established by law—whatever

20 Cal 153. District courts before 1880 17 Cal 311, 317

42 Cal 409; 44 Cal 118. Subd. 3. Official acts of governmental

agents—Congressional 37 Cal 167. of State Legislature, 42 Cal

Cal 171. judicial department 1. before 1880 17 Cal 311, 317

2. before 1880 17 Cal 311, 317. judicial department 4, Cal 4

Seals—public 41 Cal 477. Subd. 4. Chief governmental offi-

cially signed 41 Cal 477. Subd. 5. Laws of nature, etc.—geographi-

cal 40. Political history of the world 40. Books and docu-

5 C. L. J. 174. Books and docu-

CHAPTER III.

WRITINGS.

- ART. I. WRITINGS IN GENERAL.
- II. PUBLIC WRITINGS.
- III. PRIVATE WRITINGS.

ARTICLE I

WRITINGS IN GENERAL.

- § 1887. Writings, public and private.
- § 1888. Public writings defined.
- § 1889. All others private.

7. Writings are of two kinds:
Public; and,
Private.

8. Public writings are.

Written acts or records of the acts of the sovereignty, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether Federal, of the United States, of a sister State, or of a foreign country.

Public records, kept in this State, of private writings.

Section 2. Certified copy from records—as primary evidence. Cal. 210, 62 Cal. 171.

9. All other writings are private.

ARTICLE II.

PUBLIC WRITINGS.

Every citizen entitled to inspect and copy public writings.

Public officers bound to give copies.

Four kinds of public writings.

1. Written or unwritten

2. Written laws defined

3. Constitution and statutes

4. Public and private statutes defined.

5. Written law defined.

6. Presumption that laws presumed to be correct.

7. Copies of law or document.

8. Public writings of other States

9. Evidence.

C.
Authenticated.

- 1907. Oral evidence of a foreign record.
- 1908. Effect of a judgment upon rights in various cases.
- 1909. Effect of other judicial orders, when conclusive.
- 1910. Where parties are to be deemed the same.
- 1911. What deemed alleged in a judgment.
- 1912. Where sureties bound, principal is also.
- 1913. Record of another State, its effect.
- 1914. Record of a court of admiralty.
- 1915. Effect of a foreign judgment.
- 1916. Manner of impeaching a record.
- 1917. The jurisdiction necessary in a judgment.
- 1918. Manner of proving other official documents.
- 1919. Public record of private writing evidence.
- 1920. Entries in official books primary evidence.
- 1921. Justice's judgment in other States, how proved.
- 1922. Same.
- 1923. Contents of other official certificates.
- 1924. Provisions in relation to States apply to Territories.
- 1925. Certificates of purchase primary evidence of ownership.
- 1926. Entries made by officers or boards primary evidence.

§ 1892. Every citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute.

Public records, etc., open to inspection—Political Code, sec. 1892.

§ 1893. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing. [In effect July 1st, 1874.]

Certified copy from records, as primary evidence 49 Cal. 73.

§ 1894. Public writings are divided into four classes:

1. Laws;
2. Judicial records;
3. Other official documents;
4. Public records, kept in this State, of private writings.

§ 1895. Laws, whether organic or ordinary, are either written or unwritten.

§ 1896. A written law is that which is promulgated in writing, and of which a record is in existence.

§ 1897. The organic law is the constitution of the State, and is altogether written. Other written laws are denominated statutes. The written law is that which is contained in its Constitution and statutes of the United States.

§ 1898. Statutes are public or private. A public statute is one which concerns only certain designated individuals and affects only their private rights.

Statutes are public, in which are included statutes creating or affecting corporations.

§ 1899. Unwritten law is the law not promulgated and recorded, as mentioned in section eighteen hundred and ninety-six, but which is, nevertheless, observed and administered in the courts of the country. It has no certain repository, but is collected from the reports of the decisions of the courts and the treatises of learned men.

§ 1900. Books printed or published under the authority of a sister State or foreign country, and purporting to contain the statutes, code, or other written law of such State or country, or proved to be commonly admitted in the tribunals of such State or country, as evidence of the written law thereof, are admissible in this State as evidence of such law.

Books—historical, etc., sec. 1836 resort to, sec. 1875: authority of, C. 1903, subd. 35, 36.

Sister State—scope of expression, sec. 1924.

§ 1901. A copy of the written law or other public writing of any State or country, attested by the certificate of the officer having charge of the original, under the public seal of the State or country, is admissible as evidence of such law or writing. [In effect July 1st, 1874.]
Certificate—requisites of, sec. 1923.

§ 1902. The oral testimony of witnesses, skilled therein, is admissible as evidence of the unwritten law of a sister State or foreign country, as are also printed and published books of reports of decisions of the courts of such State or country, or proved to be commonly admitted in such courts.

See—sec. 1900n.

§ 1903. The recitals in a public statute are conclusive evidence of the facts recited, for the purpose of carrying into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

Recitals—in written instrument, sec. 1962, subd. 2.

§ 1904. A judicial record is the record or official entry of the proceedings in a court of justice, or of the official acts of a judicial officer, in an action or special proceeding.

Official records—judgment roll, sec. 670: papers in insolvency, 18: execution book as evidence, sec. 683: swamp land papers, corp. 11: copies admissible, 62 Cal. 171

LEGAL APPENDIX.—66.

§ 1905. A judicial record of this State, or of the United States, may be proved by the production of the original, or by a copy thereof certified by the clerk or other person having the legal custody thereof. That of a sister State may be proved by the attestation of the clerk, and the seal of the court annexed, if there be a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

Judicial record of this State, etc.—need of seal, sec. 181, subd. 1; appointment of executor, etc., sec. 1429; judgment roll, when used in execution, 47 Cal. 21.

Judicial record of a sister State—U. S. Const. art. 4, sec. 1; 428, 7 Cal. 247; 12 Cal. 181. of United States as to lands, 13 Cal. 66.

Certificate—sec. 1923.

§ 1906. A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk and seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the chief judge, or presiding magistrate, that the person making the attestation is the clerk of the court, or the legal keeper of the record, and, in either case, that the signature of the person is genuine, and that the attestation is in due form. The signature of the chief judge or presiding magistrate must be authenticated by the certificate of the minister, ambassador, or a consul, vice-consul, or consular agent of the United States in such foreign country. [In effect, 1st, 1874.]

Foreign judgment—39 Cal. 646.

Certificate—sec. 1923.

§ 1907. A copy of the judicial record of a foreign country is also admissible in evidence, upon proof—

1. That the copy offered has been compared by the court with the original, and is an exact transcript of the whole of it;
2. That such original was in the custody of the clerk of the court, or other legal keeper of the same; and
3. That the copy is duly attested by a seal, and proved to be the seal of the court where the record remains, if it be the record of a court, or if there be no seal, or if it be not a record of a court, by the seal of the legal keeper of the original.

§ 1908. The effect of a judgment or final order in an action or special proceeding before a court of this State

erally, 23 Cal. 373, 30 Cal. 369, 36 Cal. 231: Issues tried, limit est. Cal. 28, 38 Cal. 647; merits not passed on, 25 Cal. 272, 41 Cal. 597; 128 misjoinder where 21 Cal. 287: motion to set aside judgment when no bar, 41 Cal. 287: questions involved, determine estoppel, Cal. 311, remitted judgment, 44 Cal. 823. Same cause of action, 373, Laddie Park v. M. H. 18th, 1880, 5 Pac. C. L. J. 189, 190 La. v. Newhall, May 1st, 1880, 5 Pac. C. L. J. 417. Serious offense, conviction of, 14 Cal. 387. Stipulation, where, 43 Cal. 48. 45 Cal. 291 and judgment as to when landlord not barred by Abbe Doyle v. M. H. 18th, 1880, 5 Pac. C. L. J. 189. Verdict of jury, Cal. 51, 74 Cal. 22, 54 Cal. 145, 192 425, 24 Cal. 444, 486, 41 Cal. 291, 294. Parties and privies—see 1908 alone estopped 30 Cal. 291, 23 Cal. 374, 30 Cal. 289, 40 Cal. 249: application to parties, 12 Cal. 140, 34 Cal. 507, 34 Cal. 62, 39 Cal. 224, 44 Cal. 46, 45 Cal. Cal. 186, 49 Cal. 117, 243, 50 Cal. 17, 655, 51 Cal. 478, Abbe Doyle v. M. H. 18th, 1880, 5 Pac. C. L. J. 189. Estoppel in various cases, counterclaim barred by not pleading, sec. 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000. Private Court decrees, see JUDGMENT, notes, 1908, v. Spillano, Feb. 20th, 1880; Reynolds v. Brumagim, March 1st, 1880, 5 Pac. C. L. J. 116; sureties, sec. 1912.

§ 1909. Other judicial orders of a court or judge of this State, or of the United States, create a disputeable presumption, according to the matter directly determined between the same parties and their representatives or successors in interest by title subsequent to the commencement of the action or special proceeding litigating the same thing under the same title and in the same capacity.

Disputable presumptions—see sec. 1963 and notes.

Parties and privies—see sec. 1908, subd. 2n, sec. 1910.

§ 1910. The parties are deemed to be the same in those between whom the evidence is offered were opposite sides in the former case, and a judgment or determination could in that case have been made by them alone, though other parties were joined with or either.

Other parties—49 Cal. 213.

§ 1911. That only is deemed to have been adjudicated in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

See matter directly adjudged—note to sec. 1908, subd. 1.

§ 1912. Whenever, pursuant to the last four sections, a party is bound by a record, and such party sues in the relation of a surety for another, the latter is not bound from the time that he has notice of the action going on, and an opportunity at the surety's request to defend the defense.

Suit by surety against principal—16 Cal. 69.

§ 1913. The effect of a judicial record of a sister State is the same in this State as in the State where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which he was invested with his authority. Judgment obtained in another State—by publication of summons. Cal. 449.

§ 1914. The effect of the judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

§ 1915. The effect of the judgment of any other tribunal of a foreign country having jurisdiction to pronounce the judgment is as follows:

1. In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;
2. In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title, and can only be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

§ 1916. Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.

Judicial record, impeaching— not for error, 32 Cal. 176; by infant, 1 Cal. 273; by showing alteration, 50 Cal. 448; by collateral attack, 49 Cal. 208; for want of jurisdiction, see sec. 1917 and note, 7 Cal. 54, 443, Cal. 562, 27 Cal. 300, 30 Cal. 439.

§ 1917. The jurisdiction sufficient to sustain a record of jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

Jurisdiction—generally see note to sec. 33; also sec. 1908 and note; defense it suid by fictitious name, 50 Cal. 203; of court not of record, on collateral attack, 52 Cal. 171.

§ 1918. Other official documents may be proved as follows.

1. Acts of the executive of this State, by the records of the State Department of the State; and of the United States, by the records of the State Department of the United States, certified by the heads of those departments respectively. They may also be proved by public docu-

ments printed by the order of the Legislature or Congress, or either house thereof.

2. The proceedings of the Legislature of this State or Congress, by the journals of those bodies respectively, or by published statutes or resolutions, or by copies certified by the clerk or printed by order.

3. The acts of the executive, or the proceedings of the Legislature of a sister State, in the same manner.

4. The acts of the executive, or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country, or by a copy certified under the seal of a country or sovereign, or by a recognition thereof in a public act of the executive of the United States.

5. Acts of a municipal corporation of this State or a board or department thereof, by a copy, certified by the legal keeper thereof, or by a printed book published by the authority of such corporation;

6. Documents of any other class in this State, by the original, or by a copy, certified by the legal keeper thereof;

7. Documents of any other class in a sister State, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the secretary of state, or judge of the supreme, superior, or county court, or mayor of a city of such State, that the copy is a true and correct copy of the original, and that the copy is deposited by the officer having the legal custody of the original;

8. Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate, under seal of the country or sovereign, that the document is a valid and authentic document of such country, and that the copy is a true and correct copy of the original, and that the copy is deposited by the officer having the legal custody of the original;

9. Documents in the departments of the United States government, by the certificate of the legal keeper thereof. [In effect July 1st, 1874.]

OFFICIAL DOCUMENTS.

SUBDIVISION 5. Municipal corporation—44 Cal. 142.

SUBDIVISION 6. Certified copy—of documents in the State—Caldo grants, 31 Cal. 202; certificate, see 10; record, 44 Cal. 142; swamp land papers, 44 Cal. 142.

SUBDIVISION 7. Documents in another State—“sister State,” sec. 1924. In land department of United States—344, 18 Cal. 416, 19 Cal. 87, 40 Cal. 37.

1. A public record of a private writing may be by the original record, or by a copy thereof, certified by the legal keeper of the record.

Record of a private writing: certified copy of alcalde Dal. 500; deed, 49 Cal. 712; expediente of Mexican grant, 51 Cal. 488; power of attorney, 51 Cal. 488; railroads, consolidation, 50 Cal. 343.

2. Entries in public or other official books or made in the performance of his duty by a public officer of this state, or by another person in the performance of a duty specially enjoined by law are *prima facie* evidence of the facts stated therein. [In effect July 1st,

Documents: proof of, see 1918.

in performance of public duty—6 Cal. 674; 51 Cal. 140, 300; by officer or board of officers, etc., see 1926.

1. A transcript from the record or docket of a judgment of the peace of a sister state, of a judgment rendered in the proceedings in the action before the court, of the execution and return, if any subscribed by the justice and verified in the manner prescribed in this section, is admissible evidence of the facts stated

2. There must be attached to the transcript a certificate of the justice that the transcript is in all respects correct and that he had jurisdiction of the action, and a certificate of the clerk or prothonotary of the court in which the justice resided at the time of giving the judgment, under the seal of the county, or of the court of common pleas or county court certifying that the person subscribing the transcript, at the date of the judgment, a justice of the peace of the county, and that the signature is genuine. The judgment, proceedings, and jurisdiction may also be proved by the justice himself, on the production of his original or by a copy of the judgment, and his oral examination as a witness.

3. Whenever a copy of a writing is certified for use of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of such part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court, under the seal of such court. [In effect July 1st, 1919.]

§ 1924. The provisions of the preceding sections of this article applicable to the public writings of a sister State are equally applicable to the public writings of the United States or a Territory of the United States. [In effect July 1st, 1874.]

§ 1925. A certificate of purchase or of location of lands in this State, issued or made in pursuance of law of the United States or of this State, is prima facie evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that at the time of the location, or time of filing a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those to whom he claims, or that the adverse party is holding the land for mining purposes.

Certificate of purchase adverse possession, defendant cannot Cal. 47; annulment of, 50 Cal. 84, 51 Cal. 128; effect of, 51 Cal. 128; evidence of, 52 Cal. 121; evidence as, 49 Cal. 23; sufficient proof of title when, 51 Cal. 534; judgment in, where, 50 Cal. 60; mortgagee, where junior, 53 Cal. 649; premature, 51 Cal. 534; prima facie title by, 51 Cal. 244; proof of existence, and of preliminary steps, 51 Cal. 169; requisites, 51 Cal. 128; scope of, 52 Cal. 521; suspension of, 51 Cal. 461; 53 Cal. 521.

§ 1926. An entry made by an officer, or board of officers, or under the direction and in the presence of officers, in the course of official duty, is *prima facie* evidence of the facts stated in such entry. [In effect July 1st, 1874.]

Board—of commissioners, report as evidence, 49 Cal. 23.

ARTICLE III.

PRIVATE WRITINGS.

- § 1927. Private writings classified.
- 1930. Seal defined.
- 1931. Manner of making it.
- 1932. Effect of a seal.
- 1933. Execution of an instrument defined.
- 1934. Compromise of a debt without seal good.
- 1935. Subscribing witness defined.
- 1936. Books, maps, etc. how far evidence.
- 1937. Original writing to be produced or accounted for.
- 1938. When in possession of adverse party, notice to produce.
- 1939. Writings called for and inspected may be written.
- 1940. Where there is a subscribing witness, the proof.
- 1941. Other witnesses may also testify.
- 1942. When evidence of execution not necessary.
- 1943. Evidence of handwriting.
- 1944. Allowed by comparison.
- 1945. Same.
- 1946. Entries of decedent's evidence in specified cases.

copies of entries also allowed.
 Private writings acknowledged and certified.
 County clerks to keep private papers deposited.
 Public records not to be carried about.

Private writings are either -

1. or,
 2. sealed.

Distinction--between sealed and unsealed writings, sec. 1932.

A seal is a particular sign, made to attest in formal manner, the execution of an instrument, usually--see 14 and notes requisite, sec. 1931.

A public seal in this State is a stamp or impression made by a public officer with an instrument proper, to attest the execution of an official or public act, upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible mark. A private seal may be made in the same manner by any instrument, or it may be made by the pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign made in any State or foreign country, and there recognized must be so regarded in this State. [In effect July 1st, 1874.]

Word "seal" sec. 14.

Effect of seal Civil Code, sec. 1628, 5 Cal. 220, 315.

Operation 22 Cal. 156, 52 Cal. 192.

Courts sec. 147 133

There shall be no difference hereafter, in this State, between sealed and unsealed writings. A writing may therefore be changed, or altogether destroyed, without changing a writing not under seal. [In effect July 1st, 1874.]

Existing provision see Civil Code sec. 1629.

Distinction abolished 11 Cal. 220, 510, 15 Cal. 363, 16 Cal. 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Effect of composition requires no seal sec. 1934.

Modern system no distinction, sec. 14a.

The execution of an instrument is the subscription and delivering it, with or without affixing a seal.

Effect of instrument as to writing, 4 Cal. 17, 19 Cal. 352, 43 Cal. 404, 45 Cal. 404, 46 Cal. 404, 47 Cal. 404, 48 Cal. 404, 49 Cal. 404, 50 Cal. 404, 51 Cal. 404, 52 Cal. 404, 53 Cal. 404, 54 Cal. 404, 55 Cal. 404, 56 Cal. 404, 57 Cal. 404, 58 Cal. 404, 59 Cal. 404, 60 Cal. 404, 61 Cal. 404, 62 Cal. 404, 63 Cal. 404, 64 Cal. 404, 65 Cal. 404, 66 Cal. 404, 67 Cal. 404, 68 Cal. 404, 69 Cal. 404, 70 Cal. 404, 71 Cal. 404, 72 Cal. 404, 73 Cal. 404, 74 Cal. 404, 75 Cal. 404, 76 Cal. 404, 77 Cal. 404, 78 Cal. 404, 79 Cal. 404, 80 Cal. 404, 81 Cal. 404, 82 Cal. 404, 83 Cal. 404, 84 Cal. 404, 85 Cal. 404, 86 Cal. 404, 87 Cal. 404, 88 Cal. 404, 89 Cal. 404, 90 Cal. 404, 91 Cal. 404, 92 Cal. 404, 93 Cal. 404, 94 Cal. 404, 95 Cal. 404, 96 Cal. 404, 97 Cal. 404, 98 Cal. 404, 99 Cal. 404, 100 Cal. 404.

An agreement in writing without a seal, for the discharge or settlement of a debt, is as obligatory as if a seal were affixed.

published maps or charts, when inconsistent between the parties, are *prima facie* facts of general notoriety and interest. 1st, 1874.]

Books: as aid to court, sec. 1875; as evidence, sec. 1876; as to, sec. 1863, subds. 35, 36.

§ 1937. The original writing must be proved, except as provided in sections one thousand and fifty-five and nineteen hundred and eighty-five. If the original has been lost proof of the loss must first be given, and then evidence can be given of its contents. If being made, together with proof of the fact of the writing, its contents may be proved by a recital of its contents in some authentic form, or the recollection of a witness, as provided in section one thousand and fifty-five.

Evidence of contents of instrument lost before, 3 Cal. 427, 49 Cal. 653.

§ 1938. If the writing be in the custody of a party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But to entitle him to do so it is not necessary where the writing was in his possession, or where it has been wrongfully obtained by him, or where it has been wrongfully withheld by the adverse party.

Document in possession—of opponent, sec. 1938.

§ 1939. If the writing be in the custody of a party, he must first have reasonable notice to produce it.

If the subscribing witness denies or does not prove the execution of the writing, its execution may be proved by other evidence.

Where, however, evidence is given that the testator whom the writing is offered has at any time executed it, no other evidence of the execution is given, when the instrument is one mentioned in section hundred and forty-five, or one produced in custody of the adverse party, and has been acted upon as genuine.

The handwriting of a person may be proved by a witness who believes it to be his, and who has seen or has seen writings purporting to be his, upon which he has acted or been charged, and who has thus acquired knowledge of his handwriting.

Section of handwriting—47 Cal. 284; experts, 50 Cal. 462.

Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, of the writings admitted or treated as genuine by the testator, with the evidence is offered, or proved to be so to the satisfaction of the judge. [In effect, 1874.]

Where a writing is more than thirty years old, and is generally respected and acted upon as genuine by persons having an interest in knowing the fact, it is presumed to be genuine, see 1963, subd. 34.

The entries and other writings of a decedent, near the time of the transaction, and in a position to show the facts stated therein, may be read as evidence of the facts stated therein, in the following cases:

- 1. If the entry was made against the interest of the maker;
- 2. If it was made in a professional capacity, and in the ordinary course of professional conduct;
- 3. If it was made in the performance of a duty enjoined by law. [In effect July 1st 1874.]

Books repeated, sec. 1947, as evidence in favor of party. 2 Cal. 177; 7 Cal. 186; 14 Cal. 573; 17 Cal. 58, 466. Of alteration, 23 Cal. 511; 49 Cal. 105; where alteration, sec. 1962.

When an entry is repeated in the regular business, one being copied from another at or

near the time of the transaction, all the copies are equally regarded as originals.

Entry copied—from slate, 14 Cal. 573.

§ 1948. Every private writing, except last wills and testaments, may be acknowledged or proved and in the manner provided for the acknowledgment of conveyances of real property, and the certificate of acknowledgment or proof is *prima facie* evidence of the execution of the writing in the same manner as if it were a conveyance of real property. [In effect July 1st, 1874.]

Conveyance of real property—as evidence, sec. 1351.

§ 1949 of said Code is repealed. [In effect July 1st, 1874.]

§ 1950. The record of a conveyance of real property or any other record, a transcript of which is admitted in evidence, must not be removed from the office where kept, except upon the order of a court, in cases where inspection of the record is shown to be essential to the just determination of the cause or proceeding pending where the court is held in the same building with the office. [In effect July 1st, 1874.]

§ 1951. Every instrument conveying or affecting real property, acknowledged, or proved and certified as provided in the Civil Code, may, together with the certificate of acknowledgment or proof, be read in evidence in any action or proceeding, without further proof, and a certified copy of the record of such conveyance or instrument thus acknowledged or proved may also be received in evidence, with the like effect as the original, on the affidavit, or otherwise, that the original is not in the possession or under the control of the party producing the certified copy. [In effect July 1st, 1874.]

Certified copies of conveyances—when admissible, 25 Cal. 50, 238; 38 Cal. 216, 449.

CHAPTER IV.

MATERIAL OBJECTS PRESENTED TO THE SENSES, OTHER THAN WRITINGS.

§ 1954. Material objects.

§ 1954. Whenever an object, cognizable by the senses, is such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, or to make an item the sum of the evidence, such object may be exhibited to the jury, or its existence, situation, or character may be proved by witnesses. The admission of such evidence must be regulated by the sound discretion of the court.

Material objects—blood-spots provable by witnesses, 49 Cal. 485.

CHAPTER V.

INDIRECT EVIDENCE, INFERENCES, AND PRESUMPTIONS.

§ 1957. Indirect evidence classified.

§ 1958. Inference defined.

§ 1959. Presumption defined.

§ 1960. When an inference arises.

§ 1961. Presumptions may be controverted, when.

§ 1962. Specification of conclusive presumptions.

§ 1963. All other presumptions may be controverted.

§ 1957. Indirect evidence is of two kinds:

1. Inferences, and,
2. Presumptions.

§ 1958. An inference is a deduction which the reason of the jury makes from the facts proved, without an express direction of law to that effect.

§ 1959. A presumption is a deduction which the law expressly directs to be made from particular facts.

§ 1960. An inference must be founded—

1. On a fact legally proved, and,
2. On such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

PENAL APPENDIX.—57.

deemed conclusive:

1. A malicious and guilty intent, for the commission of an unlawful act, for the injury to another.

2. The truth of the facts recited, from a written instrument between the parties and their successors in interest by a subsequent title does not apply to the recital of a consideration.

3. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of or connected with such belief, be permitted to deny the truth of such belief.

4. A tenant is not permitted to deny the title of the landlord at the time of the commencement of the action.

5. The issue of a wife cohabiting with her husband who is not impotent, is indisputably legitimate.

6. The judgment or order of a court, in this Code to be conclusive; but such judgment or order must be alleged in the pleadings, if there be opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence.

7. Any other presumption which, by the law, is expressly made conclusive.

ESTOPPEL.

SUBDIVISION 1. Malicious intent to injure.

That a person intends the ordinary consequence of
 acts not

4. That a person takes ordinary care of his own concerns.
5. That evidence willfully suppressed would be adverse if produced.
6. That higher evidence would be adverse from inferior being produced.
7. That money paid by one to another was due to the latter.
8. That a thing delivered by one to another belonged to the latter.
9. That an obligation delivered up to the debtor has been paid.
10. That former rent or installments have been paid when a receipt for latter is produced.
11. That things which a person possesses are owned by him.
12. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership.
13. That a person in possession of an order on himself for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly.
14. That a person acting in a public office was regularly appointed to it.
15. That official duty has been regularly performed.
16. That a court or judge, acting as such, whether in the State or any other State or country was acting as such.

that a person not heard from in seven years is dead
 that acquiescence followed from a belief that the
 acquiesced in was conformable to the right or fact.
 that things have happened according to the ordi-
 nary course of nature and the ordinary habits of life.

that persons acting as copartners have entered into
 a contract of copartnership.

that a man and woman deporting themselves as hus-
 band and wife have entered into a lawful contract of
 marriage.

that a child born in lawful wedlock, there being no
 other proof, is legitimate.

that a thing once proved to exist continues as long
 as it is not proved to have ceased to exist.

that the law has been obeyed.

that a document or writing more than thirty years
 old is genuine when the same has been since generally
 known as genuine, by persons having an interest in
 it, and its custody has been satisfactorily ex-
 plained.

that a printed and published book, purporting to
 be printed or published by public authority, was so
 printed or published.

that a printed and published book, purporting to
 be a report of cases adjudged in the tribunals of the
 country where the book is published, contains
 reports of such cases.

that a trustee or other person, whose duty it was to
 convey real property to a particular person, has actually
 conveyed it to him, when such presumption is necessary to
 give effect to the title of such person or his successor in inter-
 est.

that the uninterrupted use by the public of land for a
 certain purpose, for five years, with the consent of the
 owner, and without a reservation of his rights, is presump-
 tive evidence of his intention to dedicate it to the public
 use for that purpose.

that there was a good and sufficient consideration
 for a written contract.

that when two persons perish in the same calamity, such
 as a shipwreck, a battle, or a conflagration, and it is not shown
 which perished first, and there are no particular circumstances
 which it can be inferred, survivorship is presumed
 according to the probabilities resulting from the strength, age,
 &c. according to the following rules.

—If both of those who have perished were under
 the age of fifteen years, the older is presumed to have
 survived.

FOURTH—If the sexes be different, the male is preserved. If the sexes be the same, then

Fifth.—If one be under fifteen or of other between those ages, the latter is survived.

Presumptions—when raised, 21 Cal 456; of 50 Cal 337; rebutting, 53 Cal 659. where two are 630.

DISPUTABLE PRESUMPT

SUBDIVISION 1. Innocence—of crime or will to overcome, see sec 204, subd 5.

SUBDIVISION 6. Higher evidence adverse

SUBDIVISION 8. Thing delivered, etc.—deed

SUBDIVISION 11. Title from possession—property, 4 Cal 33, 67, 73, 14, 178, 708, 5 Cal 41, 87, 113, 649, 7 Cal 15, 267, 8 Cal 143, 378, 487, 605, 9 Cal 181, 230, 233, 11 Cal 113, 12 Cal 271, 569, 13 Cal 143, 17 Cal 43, 17, 21, 18 Cal 178, 19 Cal 625, 20 Cal 224, 241, 43, 45, 619, 21 Cal 211, 550, 24 Cal 27, 5, 28 Cal 202, 29 Cal 206, 44, 30 Cal 335, 48, 31 Cal 603, 36 Cal 21, 334, 37 Cal 111, 43 Cal 371, 485, 49 Cal 101, 281, 45 Cal 523. *Personal property*—Cal 37, 9 Cal 240, 11 Cal 64, 31 Cal 649. *Possession, in contract, by*, 30 Cal 247, 316. *Specimens, in*, 13 Cal 201. *see REAL PROPERTY, supra*; servant by 8 Cal 51, timber, of, 12 Cal 316.

SUBDIVISION 14. Officer deemed regularly 5 Cal 38, 6 Cal 215, 16 Cal 532, 24 Cal 121, 53 Cal

SUBDIVISIONS 15 and 16. Regular performance of judicial duty—1 Cal 122; 3 Cal 27, 129; 5 Cal 211, 227, 24 Cal 221, 22 Cal 222.

- DIVISION 29.** Copartners—39 Cal. 237; 49 Cal. 344.
DIVISION 30. Marriage—Civil Code, secs. 68-78; 10 Cal. 637; 26
 2; 41 Cal. 637; 51 Cal. 304.
DIVISION 31. Legitimacy 13 Cal. 11.
DIVISION 32. Law obeyed 51 Cal. 210.
DIVISION 33. Foreign laws 2 Cal. 226; 32 Cal. 80.
DIVISION 34. Consideration of contract—see subd. 21, note.

PRESUMPTIONS IN VARIOUS CASES.

- 41 Cal. 107.** Ancient writing when deemed genuine.
subd. 31. Authenticity of book when presumed, see 193.
32. Burial ground of testator to public, see 193 subd. 24.
33-45 Cal. 4. Community property 1 Cal. 25. Conclusive
 presumptions 12 Cal. 110. Continuance—of existing thing,
 193, subd. 32. Contract—negotiation, 12, 30, 193, subd. 30.
 of executor etc. 193, subd. 32. Date of writing, direct,
 193, subd. 31. Indorsement of a document see subd. 31. Disput-
 presumption, 193, subd. 31. Entire issue etc.—
 193, subd. 32. Evidence suppressed would be ad-
 sec 193, subd. 5. Execution of a document, see 193, subd. 31.
 Department records 193, subd. 31. Foreign laws
 193, subd. 33. Higher evidence
 193, subd. 31. Identity of person from 193, subd. 31.
 Indorsement of a document 193, subd. 31.
 Innocence 193, subd. 31. Jurisdic-
 presumption 193, subd. 31. Law of 193, subd. 33.
 Locality 193, subd. 31. Letters received 193, subd. 31.
 of mail 193, subd. 31. Ministerial 193, subd. 31.
 Money paid was due, 193, subd. 31. Negligence—
 193, subd. 31. Notary's pro-
 193, subd. 31. Obligation delivered back 193, subd. 31.
 193, subd. 31. Officer regularly appointed 193, subd. 31.
 Official and judicial duty regularly performed—see
 193, subd. 31. Ordinary care taken 193, subd. 31.
 of consequences 193, subd. 31. Ordinary
 of business 193, subd. 31. Ordinary
 of nature, etc. 193, subd. 31. Ownership when a pre-
 193, subd. 31. Partnership 193, subd. 31. Note
 193, subd. 31. Person not heir from 193, subd. 31.
 Possession imports ownership 193, subd. 31.
 Possessor of order on himself 193, subd. 31.
 Private transaction 193, subd. 31. Pro-
 Court order for enforcement of property, 193, subd. 31. Promissory
 193, subd. 31. Receipt
 193, subd. 31. Record 193, subd. 31. Short-hand notes 193, subd. 31. Stock 193, subd. 31. Surviving claim-
 193, subd. 31. Thing delivered to owner, see, 193, subd. 31.
 Unlawful intent—see 193, subd. 2.

CHAPTER VI. INDISPENSABLE EVIDENCE

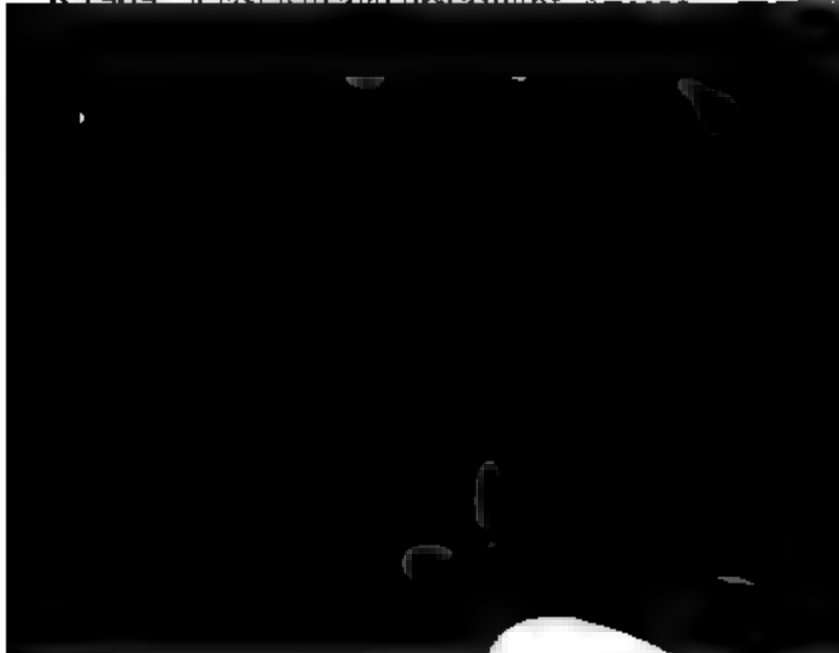
- § 1967. Indispensable evidence, what.
- § 1968. To prove usage, perjury, and treason, more than one witness required.
- § 1969. Will to be in writing.
- § 1970. How revoked.
- § 1971. Transfer of real property to be in writing.
- § 1972. Last section not to extend to certain cases.
- § 1973. Agreement not in writing, when invalid.
- § 1974. Representation of credit by writing.

§ 1967. The law makes certain evidence necessary to the validity of particular acts, or the proof of particular facts.

§ 1968. Perjury and treason must be proved by testimony of more than one witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two witnesses, or one witness and corroborating circumstances.

Two witnesses—for probate of lost will, sec. 1333.

§ 1969. A last will and testament cannot be proved by the testimony of one witness.



Scope of section—application restricted by, sec. 1972.

Corresponding provision—Civil Code, sec. 1091.

Real property—estate, interest etc., in, compare sec. 1973, subd. 6:
All of same insufficient, 52 Cal. 191 mortgage lien can only be created
by writing 55 Cal. 57.

Trust—Civil Code, sec. 852, 6 Cal. 154.

§ 1972. The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

Trusts—implied 21 Cal. 92, 22 Cal. 575, 27 Cal. 119, 35 Cal. 491, 36 Cal. 94.

Part performance—enforcing verbal contract after, 1 Cal. 119, 207, 10 Cal. 159, 19 Cal. 437, 24 Cal. 142, 35 Cal. 646, 39 Cal. 109; 44 Cal. 595, 48 Cal. 134 executed parol agreement to convey land, not within statute, 5 Cal. 561.

§ 1973. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement, cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof,

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four of the Civil Code,

3. An agreement made upon consideration of marriage, other than a mutual promise to marry,

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his salesbook with the time of the sale, of the kind of property sold, the terms of sale, the price, and the names of the purchaser and person on whose account the sale is made, is a satisfaction in writing.

5. An agreement for the leasing for a longer period than one year, or of an interest in real property, or of an interest therein, unless an agreement, made by an agent of the party sought to be charged is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

SUBDIVISION 3. Guaranty—corresponding sec. 2773: exception, Civil Code, sec. 2794: execute the statute, 3 Cal. 155, 9 Cal. 328, 12 Cal. 286, 543; otherwise, 5 Cal. 285, 6 Cal. 102, 7 Cal. 3, 12 Cal. 3187, 27 Cal. 80, 29 Cal. 150, 31 Cal. 171, 34 Cal. 651; consideration for forbearance, 3 Cal. 460, 50 Cal. note, 3 Cal. 435.

SUBDIVISION 4. Agreement for sale of goods—entry of, see 1 Cal. 415, also, Civil Code, sec. 173, 329; corresponding provision, Civil Code, sec. 173, sec. 174: contract in writing, when presumed, 1 Cal. 140, 8 Cal. 4, 14 Cal. 384, 19 Cal. 333, 22 Cal. goods and chattels, growing crops are not 6 Cal. 634: insurance policy, fire, as collateral security, 47 Cal. 141.

SUBDIVISION 5. Agreement as to real property, 21 Cal. 389, 30 Cal. 360, 47 Cal. 213: auction, 75 before statute enacted, 1 Cal. 34: corresponding Code, sec. 1741: court, sale of, not within statute, parol agreement to convey land, not within statute, 52 Cal. 561, growing crops, not within statute, 634: lease for more than a year, 2 Cal. 608: Mexican, under, 1 Cal. 10, 10 Cal. 7, 24 Cal. 221, 41 Cal. 127, claim, 14 Cal. 22, 20 Cal. 198, 23 Cal. 178, 30 Cal. agreement not to oppose patent void, 52 Cal. 561, sec. 172 and note, promise, parol to pay for, 30 Cal. 459: purchase for another, 23 Cal. 575, 33 Cal. Cal. 114: services in selling land, 37 Cal. 529; specific performance of verbal contract, 24 Cal. 179, 21 Cal. 97, 33 Cal. 48: unwritten contract for sale, 90: verbal agreement to reconvey land, 48 Cal. 48, part if entire contract invalid, 39 Cal. 99: writings, 51 Cal. 210.

§ 1974. No evidence is admissible upon a representation as to the credit

TITLE III.

Of the Production of Evidence.

- CHAP. I. By whom to be produced. §§ 1981-1982.**
- II. Means of production. §§ 1985-1997.**
- III. Manner of production. §§ 2002-2054.**

CHAPTER I BY WHOM TO BE PRODUCED.

§ 1981. Evidence to be produced by whom.

§ 1982. Writing altered, who to explain.

§ 1981. The party holding the affirmative of the issue must produce the evidence to prove it, there being no burden of proof lies on the party who would be benefited if no evidence were given on either side.

Burden of proof—see under AFFIRMATIVE ALLEGATIONS: affirmative matter in answer, where, 8 Cal. 31; 15 Cal. 111; indictment in 51 Cal. 55; insanity of, 47 Cal. 134; money paid on, 26 Cal. 606.

§ 1982. The party producing a writing as to which has been altered, or appears to have been altered after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by a third person without his concurrence, or was made with the concurrence of the parties affected by it, or otherwise properly and lawfully made, or that the alteration did not change the meaning or language of the instrument. If he cannot show this, he may give the writing in evidence, but not the altered part.

Alteration—effect of, 50 Cal. 613; impeaching certificate of, 171 in indictment, 50 Cal. 44; need of accounting for, 30 Cal. 564; explained, 34 Cal. 564.

Printed form—erasure in, 32 Cal. 58; construction of, see.

CHAPTER II MEANS OF PRODUCTION.

- § 1985. Subpoena for witness defined.
- § 1986. Subpoena, how issued.
- § 1987. Subpoena, how served.
- § 1988. How, if witness be concealed.
- § 1989. Who is a witness is compelled to attend.
- § 1990. Person present compelled to testify.
- § 1991. Disobedience, how punished.
- § 1992. Forfeiture therefor.
- § 1993. Warrant may issue to bring witness, when.
- § 1994. Contents of warrant.
- § 1995. If witness be a prisoner, how brought.
- § 1996. On whose motion.
- § 1997. How examined.

§ 1985. The process by which the attendance of a witness is required is a subpoena. It is a writ.

ated to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control, which he is bound by law to produce in evidence.

1986. The subpoena is issued as follows:

To require attendance before a court, or at the trial or an issue therein, it is issued under the seal of the court before which the attendance is required, or in which the case is pending,

To require attendance out of the court, before a judge, justice, or other officer authorized to administer oaths or to take testimony in any matter under the laws of this State, it is issued by the judge, justice, or any other officer before whom the attendance is required,

To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any other State in the United States, or of any other district or county within the State, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within their respective jurisdiction, with like power to enforce attendance, and, upon certificate of contemptary to a court, to punish contempt of their process, as such judge or justice could exercise if the subpoena directed attendance of the witness before their courts in a matter pending therein.

1987. The service of a subpoena is made by showing the original and delivering a copy, or a ticket containing substance, to the witness personally, giving or offering him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person.

1988. If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any court or judge, or any officer issuing a subpoena, may, on proof by affidavit of the concealment, and of the pertinacity of the witness, make an order that the sheriff of the county serve the subpoena, and the sheriff must do it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

§ 1989. A witness is not obliged to attend as before any court, judge, justice, or any other officer of the county in which he resides, unless the distance is less than thirty miles from his place of residence to the place of trial.

§ 1990. A person present in court, or before a court officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by the court or officer.

§ 1991. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as contempt by the court or officer issuing the subpoena requiring the witness to be sworn; and if the witness is a party, his complaint or answer may be stricken.

Disobedience to subpoena—46 Cal. 82.

Refusal to answer—see 2063, 35 Cal. 89.

Contempt—secs. 1209, 1219.

§ 1992. A witness disobeying a subpoena also liable to the party aggrieved the sum of one hundred dollars and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

§ 1993. In case of failure of a witness to attend court or officer issuing the subpoena, upon proof of the failure thereof, and of the failure of the witness, the court or officer may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

§ 1994. Every warrant of commitment, issued by a court or officer pursuant to this chapter, must contain therein, particularly, the cause of the commitment, if it be for refusing to answer a question, such cause must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to this chapter, must be directed to the sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the Superior Court. [In effect April 16th, 1880.]

§ 1995. If the witness be a prisoner, confined in jail or prison within this State, an order for his removal from the prison upon deposition, or for his removal and production before a court or officer,

purpose of being orally examined, may be made as follows:

1. By the court itself in which the action or special proceeding is pending, unless it be a Justice's Court;

2. By a justice of the Supreme Court, or a judge of the Superior Court of the county where the action or proceeding is pending, if pending before a Justice's Court, or before a judge or other person out of court. [In effect April 16th, 1880.]

§ 1996. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

§ 1997. If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

CHAPTER III.

MANNER OF PRODUCTION.

- ART. I. MODE OF TAKING THE TESTIMONY OF WITNESSES.
- II. AFFIDAVITS.
- III. DEPOSITIONS.
- IV. MANNER OF TAKING DEPOSITIONS OUT OF THE STATE.
- V. MANNER OF TAKING DEPOSITIONS IN THE STATE.
- VI. GENERAL RULES OF EXAMINATION.

ARTICLE I.

MODE OF TAKING THE TESTIMONY OF WITNESSES.

- § 2002. Testimony, in what mode taken.
- § 2003. Affidavit defined.
- § 2004. A deposition defined.
- § 2005. Oral examination defined.
- § 2006. Deposition, how taken.

§ 2002. The testimony of witnesses is taken in the modes:

- 1 By affidavit;
- 2 By deposition;
- 3 By oral examination.



ARTICLE II.

AFFIDAVITS.

- § 2009. Affidavits and depositions, how taken.
 § 2010. Evidence of publication, what.
 § 2011. Where filed.
 § 2012. Affidavits to be used in this State, before whom may be taken in this State.
 § 2013. If made in another State of the United States, before whom taken.
 § 2014. If made in a foreign country, before whom taken.
 § 2015. Certificate of the clerk, if taken before a judge of a court out of this State.

§ 2009. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by some other provision of this Code.

Use of affidavits—81 Cal. 303.

Signature—not essential, 13 Cal. 53.

In foreign language—excluded, 23 Cal. 418.

Extent of affidavit—27 Cal. 298.

§ 2010. Evidence of the publication of a document or notice required by law, or by an order of a court or judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made.

Affidavit of publication—see sec. 413a "proprietor" synonymous with "printer," 37 Cal. 458.

§ 2011. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or a clerk thereof. If not so made, it may be filed with the clerk of the county where the newspaper is printed. In either case, the original affidavit, or a copy thereof, certified by the judge of the court or clerk having it in custody, is *prima facie* evidence of the facts stated therein. [In effect July 1st, 1874.]

§ 2012. An affidavit to be used before any court, judge, or officer of this State, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this State.

Persons authorized to take affidavits sec. 179, subd. 3. official character of justices of the peace, within the State, need not appear Cal. 53.

before any judge or clerk, or before any
seal. [In effect July 1st, 1874.]

§ 2014. An affidavit taken in a foreign country, and used in this State, may be taken before a minister, consul, v. e-consul, or consular agent of the United States, or before any judge or clerk having a seal, in such foreign country. [In effect July 1st, 1874.]

§ 2015. When an affidavit is taken in a foreign country, the genuineness of the signature of the judge or clerk, and the fact that such judge or clerk is a judge or clerk of the court thereof, must be certified by the clerk of the court thereof.

ARTICLE III.

DEPOSITIONS.

§ 2019. Deposition, when used.

§ 2020. Testimony of a witness out of the State.

§ 2021. In the State, when taken.

§ 2019. In all cases other than those provided for in section two thousand and nine, where a witness under oath is used, it must be a deposition taken by this Code.

§ 2020. The testimony of a witness may be taken by deposition, in any case where the witness is out of the State.

2. When the witness resides out of the county in which his testimony is to be used.

3. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

4. When the witness, otherwise liable to attend the trial, is nevertheless to decline to attend.

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

6. When the witness is the only one who can establish facts or a fact material to the issue: *provided*, that the deposition of such witness shall not be used if his presence can be procured at the time of the trial of the cause. [In effect March 9th, 1878.]

Deposition: mode of taking, see 2000: who may take, 2 Cal. 25; sec. 2, subd. 3. In this state, manner of taking, see 2031 *et seq.*: name party to testimony, 4 Cal. 354; s. 1, subd. 47 Cal. 644, strict construction before Code, 2 Cal. 26, 383: answering answer after, 47 Cal. 174.

SUBDIVISION 1. Party, etc. 29 Cal. 619.

SUBDIVISION 2. Out of county—29 Cal. 619.

ARTICLE IV.

MANNER OF TAKING DEPOSITIONS OUT OF THE STATE.

2024. Testimony of witness out of State taken upon commission issued under seal, upon notice. To whom to issue.

2025. Proper interrogatories may be prepared, or may be waived by the parties.

2026. Authorities and duties of commissioner.

2027. Trial, when postponed for reason of non-return of commission.

2028. Depositions, by whom used.

§ 2024. The deposition of a witness out of this State may be taken upon commission issued from the court, under the seal of the court, upon an order of the court, or a judge thereof, on the application of either party, upon five days' previous notice to the other. If issued to any place within the United States, it may be directed to a person agreed upon by the parties or, if they do not agree, to any judge or justice of the peace or commissioner, selected by the court or judge issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or any person agreed upon by the parties. [In effect April 1st, 1880.]

Commissioner—estoppel to dispute regularity of appointment. 21

the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is within that section. Such notice must be at least five days, adding also one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order must be served with the notice.

Notice: absence of, 5 Cal 444; contents of, 6 Cal 559; proof of service of, 43 Cal 144; service of, before Code, 47 Cal 644; sufficiency of, 41 Cal 37; time shortened, 17 Cal 3.

§ 2032. Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired. It must then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail, or by some safe or registered letter, and thereupon sealed and put on may be used by either party upon the trial or other proceeding against any party giving or receiving testimony, subject to all legal exceptions, but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken under subdivisions two, three, and four of section two thousand and twenty-one, proof must be made at the trial that the witness cannot be absent or infirm, or is dead. The deposition thus taken may be also read in case of the death of the witness.

Ex parte deposition after notice 6 Cal 17

Certificate of, 5 Cal 18 Cal 33, 35 Cal 30

Objections to deposition 1 Cal 31, 3 Cal 94, 9 Cal 65, 14 Cal 547;

Cal 100, 10 Cal 100, 10 Cal 4, 20 Cal 32, 43 Cal 42, when not allowed, 23 Cal 20; executor 5 Cal 26

§ 2033. Notwithstanding the taking of a deposition it may be excluded from the case upon proof that sufficient notice was not given to the party against whom it is offered to enable him to attend for taking thereof, or that the taking was not in all respects fair.

§ 2034. When a deposition has been once taken, it may be read by either party in any stage of the same.

§ 2035. Any party to an action or in a court, or before a judge of a state the testimony of a witness residing in used in such action or proceeding, in the next two sections

§ 2036. If a commission to take been issued from the court, or a judge which such action or proceeding is pending the commission to a judge of the Superior Court, an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpoena to the witness to appear and testify before the court in the commission, at a specified time and place. [Effect April 10th, 1880.]

Subpoena—sec. 1985 et seq.

§ 2037. If a commission has not been issued, a witness may be compelled to appear to a judge of the Superior Court, or a judge of the peace, by affidavit satisfactory to him that

1. That the testimony of the witness is material to the action or proceeding of either party;

2. That a commission to take the testimony has not been issued;

3. That, according to the law of the state, an action or special proceeding is pending, and a witness taken under such circumstances, such judge or justice, will be received in evidence in the action or proceeding; he must take the oath.

- 2046. Leading question defined.
- 2047. When witness may refresh memory from notes.
- 2048. Cross-examination as to what.
- 2049. Party producing witness, how far may impeach his credit.
- 2050. Witness, how examined. When re-examined.
- 2051. How impeached.
- 2052. Same.
- 2053. Evidence of good character, when allowed.
- 2054. Writing shown to witness may be inspected by adverse party.

§ 2042. The order of proof must be regulated by the sound discretion of the court. Ordinarily, the party beginning the case must exhaust his evidence before the other party begins.

Order of proof—controlled by court, sec. 607 and note; reopening, sec. 607, *subd.* 3, note, and 5 Cal. 177. In criminal case, 47 Cal. 338; mere assignment of contract, 27 Cal. 248.

§ 2043. If either party requires it, the judge may exclude from the court-room any witness of the adverse party, not at the time under examination, so that he may not hear the testimony of other witnesses.

Exclusion of witnesses—proper, 53 Cal. 471; discretion of court, 29 Cal. 622; effect of disobeying order for, 20 Cal. 436.

§ 2044. The court must exercise a reasonable control over the mode of interrogation, so as to make it as rapid, as distinct, as little annoying to the witness, and as effective for the extraction of the truth as may be; but subject to this rule—the parties may put such pertinent and legal questions as they see fit. The court, however, may stop the production of further evidence upon any particular point when the evidence upon it is already so full as to preclude reasonable doubt.

Control of court—over examination, 47 Cal. 194; answer of witness, sec. 2065, 2066; stopping further testimony, 39 Cal. 38.

§ 2045. The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness, upon the same matter, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise direct.

§ 2046. A question which suggests to the witness the answer which the examining party desires, is denominated leading or suggestive question. On a direct examination, leading questions are not allowed, except in the sound discretion of the court, under special circumstances making it appear that the interests of justice require it.

§ 2047. A witness is allowed to refresh his memory respecting a fact, by anything written by him immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that it was correctly stated in the writing. But in such case the writing must be produced and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it, and may read it to the jury. So, also, a witness may testify from such a writing, though he has no recollection of the particular facts, but such evidence must be received with caution.

Refreshing memory—4 Cal. 360; 49 Cal. 166.

Inspection of writing—shown to witness, sec. 2054.

§ 2048. The opposite party may cross-examine a witness as to any facts stated in his direct examination connected therewith, and in so doing may put such questions, but if he examine him as to other facts such examination is to be subject to the same rules as direct examination.

Cross-examination, scope and extent of—common law, 4 Cal. 223; credibility of witness, attacking, 27 Cal. 68, 30 Cal. 425, and see impeachment; directing attention of witness to direct examination of court, 36 Cal. 225, 45 Cal. 146, 47 Cal. 141; and detainer, 36 Cal. 580. Impeachment by collateral facts, 65, 119; new matter, etc., 14 Cal. 18, 30 Cal. 21, 50 Cal. 17; objection, raising in time, 45 Cal. 146; party as witness, 47 Cal. 134; prohibiting continuance, 47 Cal. 134; range of, 33 Cal. 64; recall for, 49 Cal. 62, 50 Cal. 137; responsive to direct examination, 49 Cal. 490, 7 Cal. 561; 14 Cal. 18, 33 Cal. 490, stopping further examination, sec. 2044; stopping one's own witness, 36 Cal. 225.

§ 2049. The party producing a witness is not allowed to impeach his credit by evidence of bad character or to contradict him by other evidence and he is not bound by statements made at other times inconsistent with his present testimony, as provided in section two thousand and fifty-two.

Scope of provision—30 Cal. 394.

Discrediting one's own witness—49 Cal. 394; when not permitted, 30 Cal. 360; no need of contradicting at time, 22 Cal. 231; stopping one's witness, estoppel as to, 12 Cal. 309.

§ 2050. A witness once examined cannot be re-examined as to the same matter without leave of the court, but he may be re-examined as to any new matter which he has been examined by the adverse party. If the examinations on both sides are once completed the witness cannot be recalled without leave of the court.

is granted or withheld, in the exercise of a sound discretion.

Swearing witness. in criminal case, 49 Cal. 623. discretion of court, subd. 3, note, 50 Cal. 137, 51 Cal. 191.

61. A witness may be impeached by the party to whom he was called, by contradictory evidence, evidence that his general reputation for truth, honesty, integrity is bad, but not by evidence of particular bad acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of a felony.

See—sec. 1847.

Impeaching adverse witness. *General reputation bad*, personal character not sufficient, 53 Cal. 68. credibility 41 Cal. 66; 48 Cal. 185, 49 Cal. 187; not believing under oath, 12 Cal. 306; 35 Cal. 553. hostility, 48 Cal. 185. chastity, lack of, not ground, 27 Cal. 430, 48 Cal. 553. *Previous conviction of felony*, 39 Cal. 447, 514, 517, 50 Cal. 233, 51 Cal. 597. *Range of examination*, collateral matters, 51 Cal. 597, 53 Cal. 65, 119; character, showing after impeachment, sec. 2053; laying foundation, 45 Cal. 425.

62. A witness may also be impeached by evidence he has made, at other times, statements inconsistent with his present testimony, but before this can be done the statements must be related to him, with the circumstances of time, places, and persons present, and he must be asked whether he made such statements, and if so, to explain them. If the statements be in writing, they must be shown to the witness before any question is asked him concerning them.

Consistent statements of witness—impeachment by showing, 2 Cal. 13, 21, 17 Cal. 605, 21 Cal. 348, 25 Cal. 587, 29 Cal. 421, 31 Cal. 522, 43 Cal. 162, 44 Cal. 452, 47 Cal. 138, 48 Cal. 85, 185, 49 Cal. 638, 51 Cal. 551.

63. Evidence of the good character of a party is inadmissible in a civil action, nor of a witness in any case, until the character of such party or witness has been impeached, or unless the issue involves his character.

Effect of good character. effect of 41 Cal. 485. in criminal case, after impeachment, 49 Cal. 61; 50 Cal. 233. judge's in testimony in proper case, 51 Cal. 300. testimony, irrelevant, *Donnelly*, 1880, 5 Pac. C. L. J. 215.

64. Whenever a writing is shown to a witness, it must be inspected by the opposite party, and if proved by the witness must be read to the jury before his testimony is taken, or it cannot be read except on recalling the witness.

Writing shown to witness—open to inspection, where merely introduced, 40 Cal. 457; where put in evidence, 40 Cal. 638; where done in testimony, sec. 2047.

APPENDIX—59.

OF THE EFFECT OF EVIDENCE

§ 2061. Jury judges of effect of evidence, but certain points.

§ 2061 The jury, subject to the control of the court in the cases specified in this Code, are to judge of the effect or value of evidence addressed to them, when it is declared to be conclusive. They are to be instructed by the court on all points of law.

1. That their power of judging of the effect of evidence is not arbitrary, but to be exercised with discretion and in subordination to the rules of evidence.

2. That they are not bound to decide upon the declarations of any number of witnesses, unless they produce conviction in their minds, against or against a presumption or other rule of law.

3. That a witness false in one part of his testimony may be distrusted in others.

4. That the testimony of an accomplice is to be viewed with distrust, and the evidence of a party with caution.

5. That in civil cases the affirmative must be proved, and when the evidence is in doubt, decision must be made according to the law; that in criminal cases guilt must be proved beyond reasonable doubt.

most positive testimony may be rejected, 15 Cal. 638: jury are judges of credibility, see under PROVINCE OF JURY, note *supra*.

SUBDIVISION 3. Witness, false in part—to be distrusted in all; willful falsity requisite, 53 Cal. 491: disregarding testimony improper, 30 Cal. 151; 53 Cal. 354.

SUBDIVISION 4. Accomplice—distrusting testimony of, etc., see 39 Cal. 614; 53 Cal. 601, 604, corroborating 30 Cal. 316; 39 Cal. 403; 50 Cal. 450.

Admissions—see sec. 1870, subd. 2 and note.

SUBDIVISION 5. Civil cases—affirmative of issue to be proved, see sec. 1981: preponderance of evidence, 50 Cal. 633.

Criminal cases—beyond reasonable doubt, 51 Cal. 372; 52 Cal. 446; 53 Cal. 67: same on justification of truth in slander, 50 Cal. 631.

SUBDIVISION 7. Weaker evidence offered—5 Cal. 249; 9 Cal. 430.

**TITLE V.
OF THE RIGHTS AND DUTIES OF
WITNESSES.**

- § 2064. Witnesses bound to attend when subpoenaed.
- 2065. Witnesses bound to answer questions.
- 2066. Right of witnesses to protection.
- 2067. Witnesses protected from arrest when attending, or returning.
- 2068. Arrest to be made void, and party making arrest liable.
- 2069. To make affidavit if arrested.
- 2070. Court to discharge witness from arrest.

§ 2064. A witness, served with a subpoena, must attend at the time appointed, with any papers or control required by the subpoena, and answer all proper and legal questions; and, unless sooner discharged, remain until the testimony is closed.

Subpoena—secs. 1985, 1991.

Answering questions—sec. 2065.

Witnesses—competency, etc., secs. 1878-1884: examination, refreshing memory, etc., secs. 2042-2064.

§ 2065. A witness must answer questions pertinent to the matter in issue, though his answers

court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there and returning therefrom.

Exemption from arrest—but not from obeying ordinary process, 6 Cal. 32.

§ 2068. The arrest of a witness, contrary to the preceding section, is void, and when wilfully made, is a contempt of the court, and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with a subpoena, for the damages sustained by him in consequence of the arrest.

Contempt of court—see secs. 1309-1322.

§ 2069. An officer is not liable to the party for making an arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption and make an affidavit stating—

1. That he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued and,
2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest,
3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

§ 2070. The court or officer issuing the subpoena, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of section two thousand and sixty-seven. If the court have adjourned before the arrest, or before application for the discharge, a judge of the court may grant the discharge. [In effect April 16th, 1880.]

TITLE VI.

**Of Evidence in Particular Cases,
Miscellaneous and General Provisions.**

- CHAP. I. Evidence in particular cases, §§ 2074-2079.
II. Proceedings to perpetuate testimony, §§
2080-2089.
III. Administration of oaths and affirmations,
§§ 2090-2095.
IV. General provisions, §§ 2101-2104.

CHAPTER I.

EVIDENCE IN PARTICULAR CASES.

- § 2074. An offer equivalent to payment.
- § 2075. Whoever pays is entitled to receipt.
- § 2076. Objections to tender must be specified.
- § 2077. Rules for construing description of lands.
- § 2078. Compromise offer of no avail.
- § 2079. In action for divorce, admission not sufficient.

§ 2074. An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

Offer to compromise—secs. 997, 2078.

Tender—aging, 15 Cal 376, 34 Cal 616; attorney in fact, by, 1 Cal 411, 4 Cal 550; effect of, 13 Cal 511, 34 Cal 666, 41 Cal 133; sufficiency, 31 Cal 339, 15 Cal 298, 32 Cal 168; *Herrmann v. Haffenegger*, Feb 12th, 1904, 4 Pac. C. L. J. 559; *Saretis*, by, 26 Cal 535.

§ 2075. Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

§ 2076. The person to whom a tender is made, must, at the time, specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it, and if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterward.

§ 2077. The following are the rules for constructing the descriptive part of a conveyance of real property, when the construction is doubtful and there are no other satisfactory circumstances to determine it.

1. Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false, does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

2. When permanent and visible or ascertained boundaries or monuments are inconsistent with the measure-

boundary, the rights of the grantor to the road or the thread of the stream are included in the conveyance, except where the road or stream is held under another title.

5. When tide-water is the boundary, the rights of the grantor to ordinary high-water-mark are included in the conveyance. When a navigable lake, or tide, is the boundary, the rights of the water-mark are included in the conveyance.

6. When the description refers to a map, the map is subordinate to the deed, unless the deed is inconsistent with other parties to the map; otherwise, the map is subordinate and ascertained particulars. [In effect.]

Description in conveyance: construction of, 24 Cal. 435, 25 Cal. 296, 44, 26 Cal. 386, 27 Cal. 455, 122 Cal. 306, 37 Cal. 432, 38 Cal. 122, 239, 42 Cal. 325, 43 Cal. 132, 47 Cal. 474, 48 Cal. 52, 50 Cal. 171, 421, 51 Cal. 500, 579, 655. *Sherman v. McCarthy*, March 3rd, 1880, 5 Pac. C. L. 1. *Black v. Sprague*, March 6th, 1880, 5 Pac. C. L. 1. Instruments, generally, see 1859 and note.

SUBDIVISION 1. Definite particulars prevail. 514 27 Cal. 57, 34 Cal. 624, 36 Cal. 175, 41 Cal. 122, 42 Cal. 132, 60, 47 Cal. 541, 48 Cal. 28, 49 Cal. 525, 52 Cal. 122.

SUBDIVISION 2. Boundaries or monuments prevail. 590, 11 Cal. 197, 12 Cal. 163, 17 Cal. 231, 22 Cal. 446, 23 Cal. 118, 386, 32 Cal. 11 21, 34 Cal. 344, 37 Cal. 612, 43 Cal. 21, 47 Cal. 6, 50 Cal. 376, 40, 52 Cal. 122, and see *Black v. Sprague*, March 6th, 1880, 5 Pac. C. L. 1.

SUBDIVISION 3. Lines and angles prevail.

CHAPTER II.

PROCEEDINGS TO PERPETUATE TESTIMONY.

- § 2083. Evidence may be perpetuated.
- § 2084. Manner of application for order.
- § 2085. Notice of time and place to be given.
- § 2086. Manner of taking the deposition.
- § 2087. Deposit on to be filed.
- § 2088. When the evidence may be produced.
- § 2089. Effect of the deposition.

§ 2083. The testimony of a witness may be taken and perpetuated as provided in this chapter

§ 2084. The applicant must produce to a judge of the Superior Court a petition, verified by the oath of the applicant, stating

That the applicant expects to be a party to an action in court in this State, and, in such case, the names of persons whom he expects will be adverse parties, or, That the proof of some fact is necessary to perfect title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which hereafter become material to establish, though no may at the time be anticipated or, if anticipated, he not know the parties to such suit, and,

The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved. The judge to whom such petition is presented must make an order allowing the examination, and designating the officer before whom the same must be taken, prescribing the notice to be given which notice, if the parties expectant are known and reside in this State, must be personally served, and if unknown such notices must be served on the clerk of the county where the property to be affected by such evidence is situated or the judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for publication of *summons*. The judge must also designate in his order the clerk of the county to whom the petition must be returned when taken. [In effect of 16th 1880.]

State, on receiving the commission in the next section, with proof of like service, the notice to take the deposition of the order of the judge or in the commission than one witness is thus named, of appear before him at the time designated of the same may be continued from effect July 1st, 1874.]

§ 2086. The examination must be by answer, and if the testimony is to be taken it must be taken upon a commission to judge allowing the examination, under court of which he is judge, and upon interrogatories settled in the same manner as in cases taken under commission in pending cases parties expectant, if known, otherwise parties are unknown, notice of the settlement of interrogatories shall be published in some such time as the judge may designate, when completed, must be carefully read by the witness, then certified by the officer to the judge, and shall then be sealed up and transmitted to the clerk of the county court, and the order of the judge allowing the examination shall file the same when received. The judge shall file with the clerk the examination, the petition on which the same was granted, and proof of service of the order and commission.

the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attended at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination. [In effect July 1st, 1874.]

§ 2089. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

CHAPTER III.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

- 2093. Judicial and certain officers authorized to administer oaths.
- 2094. Form of ordinary oath to a witness.
- 2095. Form may be varied to suit witness' belief.
- 2096. Same.
- 2097. Any person who prefers it may declare an oath.

§ 2093. Every court, every judge or clerk, every justice and every notary public, and every person authorized to take testimony in a proceeding, or to decide upon evidence, may administer oaths or affirmations.

Administration of oaths—by whom, sec. 123, subd. 4; Political Code, secs. 1023, 4118; by clerk for compulsory questions, 49 Cal. 383.

§ 2094. An oath, or affirmation, in a proceeding, may be administered as follows: the witness swears, or affirms, expressing his assent in the following form: "You do solemnly swear (or affirm, as the case may be) that the evidence in this issue, (or matter) pending between you and me shall be the truth, the whole truth, and nothing but the truth, so help you God." [In effect July 1, 1907.]

§ 2095. Whenever the court before which

CHAPTER IV.

GENERAL PROVISIONS.

2101. Questions of fact to be decided by the jury, and the evidence addressed to them.
 2102. Questions of law addressed to the court.
 2103. Questions of fact by court or referee.
 2104. Moneys paid into court.

§ 2101. All questions of fact, where the trial is by jury, other than those mentioned in the next section, are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided in this Code. [In effect July 1st, 1874.]

Compare—sec 706.

Questions of fact, for jury—4 Cal. 260; 9 Cal. 565; 18 Cal. 376, 25 Cal. 7; 30 Cal. 215, 32 Cal. 213, 34 Cal. 63, and see 52 Cal. 315, *People v. Long A. N. Co.*, Feb. 18th, 1880, 4 Pac. C. L. J. 552, *People v. Mitchell*, May 21st 1880, 5 Pac. C. L. J. 473. Effect of evidence, for jury, see 21 and 100. Frauds at law, 1, Civil Code, sec 342, 50 Cal. 137, 140, negligence, as to 50 Cal. 584, 587; 53 Cal. 45. Nuisance, 23 Cal. 100, 30 Cal. 15, 45 Cal. 50. Presumptions of fact, 51 Cal. 588.

§ 2102. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. Whenever the knowledge of the court is, by this Code, made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

Province of court—questions of law 6 Cal. 11, 15 Cal. 27, 367, 24 Cal. 30, 31, 54, 38 Cal. 40, 44 Cal. 14, 45 Cal. 235, 49 Cal. 250, 52 Cal. 1. Admissibility of evidence, etc., 4 Cal. 1, 6, 23 Cal. 33, 47 Cal. 194, 49 Cal. 56. Construction of writings, 39 Cal. 5, 50 Cal. 3.

Knowledge of the court—scope of judicial notice, see 1873 and notes.

§ 2103. The provisions contained in this part of the Code respecting the evidence on a trial before a jury, are equally applicable on the trial of a question of fact before a court, referee, or other officer.

§ 2104. Whenever moneys are paid into or deposited in court, the same shall be delivered to the clerk in person or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same. But, unless otherwise directed by law, deposit is

GENERAL APPENDIX.—80.

with the county treasurer, to be held by him subject to the order of the court. The treasurer shall keep each fund distinct, and open an account with each. Such appointment shall be filed with the county treasurer, who shall exhibit it, and give to each person applying for the same a certified copy of the same. It shall be in force until a revocation in writing is filed with the county treasurer, who shall thereupon write "revoked" in red ink across the face of the appointment. [In effect July 1, 1874.]

Deposit in court—secs. 572-574; corresponding provision, sec. 52.

Deposit with county treasurer—liable to taxation, 38 Cal. 32.

Final repealing clause—compare, secs. 9, 18.

**STATUTES
RELATING TO CRIMES.**

[71]



STATUTES

OF A

General nature relating to Crimes, enacted since the Code.

(THE ARRANGEMENT IS CHRONOLOGICAL.)

An Act to prevent the destruction of forests by fire on public lands.

SECTION 1. Any person or persons who shall wilfully and deliberately set fire to any wooded country or forest belonging to this state or the United States, within this state, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country or forest, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purpose or otherwise, in or near any such wooded country or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction, shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; *provided*, that nothing herein contained shall apply to any person who in good faith shall set a back fire to prevent the extension of a fire already burning. All fines collected under this act shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected. [Approved February 13, 1872. Stats. 1871-2, p. 96.]

An Act to prevent the capture and destruction of mocking birds in this State.

SECTION 1. Any person or persons who shall wilfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any mocking bird in the state of California, or shall knowingly take, injure, or destroy the nest of any

mocking bird, or shall take, injure or destroy any other bird's eggs, in the nest or otherwise, in said state, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the township in which the offense shall have been committed, shall be fined in a sum less than five dollars nor exceeding ten dollars, and cost of the action for each offense, or may be imprisoned not less than five days nor more than ten days, or by both a fine and imprisonment, as the judgment of the court may direct.

Sec. 2. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of the common school fund. [In effect February 14, 1872. See 1871-2, p. 102.]

An Act to more fully define the crime of larceny

Section 1. Every person who shall convert any manner of real estate, of the value of fifty dollars and upwards, into personal property, by severing the same from the realty, or other, with felonious intent to and shall so steal, take and carry away the same, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punishable by imprisonment in the state prison for any term not less than one nor more than fourteen years.

Sec. 2. Every person who shall convert any manner of real estate, of the value of under fifty dollars, into personal property, by severing the same from the realty, or other, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punishable by imprisonment in the state prison for any term not less than one nor more than four years.

An Act to prevent persons passing through inclosures and leaving them open, and tearing down fences to make passage through inclosures.

SECTION 1. Any person passing through an inclosure of another and leaving the same open, is guilty of a misdemeanor, and punishable by a fine not less than twenty dollars nor more than fifty dollars.

SEC. 2. Any person wilfully or maliciously tearing down fences to make a passage through an inclosure, is guilty of a misdemeanor, and punishable by a fine not less than fifty dollars nor more than five hundred dollars.

SEC. 3. All fines collected under the provisions of this act shall be paid into the county school fund of the county where the offense is committed. [In effect March 16, 1872. Stats. 1871-2, p. 354.]

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," passed April sixteenth, eighteen hundred and fifty.

SECTION 1. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, rifle box, or sulphurate machine, any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be punished by imprisonment in the state prison for any term of not less than one year nor more than fourteen years. [In effect March 20, 1872. Stats. 1871-2, p. 435.]

An Act in relation to interpreters before Grand Juries.

SECTION 1. The grand jury or district attorney may require, by subpoena, the attendance of any person before the grand jury as interpreter; and the interpreter may be present at the examination of witnesses before the grand jury. [In effect March 23, 1872. Stats. 1871-2, p. 540.]

An Act to protect the wages of labor and the salaries and fees of subordinate officers.

SECTION 1. Every person who employs laborers upon the public works, and who takes, keeps, or receives any part or portion of the wages due to such laborers from the state or municipal corporation for which such work is done, is guilty of a felony.

SEC. 2. Every officer of the state, or any county, city or township therein, who keeps or retains any part or portion of the salary or fees allowed by law to his deputy, clerk, or subordinate officer, is guilty of a felony. [In effect April 1, 1872. Stats. 1871-2, p. 951.]

An act to punish seduction.

SECTION 1. Every person who inveigles or entices any married female, of previous chaste character, under the age of eighteen years, into any house of ill fame, or of assignat or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, every person who by any false pretences, false representation or other fraudulent means, procures any female to have a carnal connection with any man, is punishable by imprisonment in the State Prison not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [Approved March 1, 1872. Stats. 1871-2, p. 184.]

An Act to prevent the sale of intoxicating drinks to minors.

SECTION 1. Every person who sells or gives to sell under the age of sixteen years, to be by him drank at the time as a beverage, any intoxicating drink, is guilty of a misdemeanor, and punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months; provided, that nothing in this Act shall be deemed to apply to parents of such children, or guardians of their wards, or physicians. [Approved March 4, 1872. Stats. 1871-2, p. 231.]

Act to prevent the sale of intoxicating beverages on election days.

SECTION 1. It shall not be lawful for any person or persons occupying a public house, saloon, or drinking place, either licensed or unlicensed to sell, give away, or furnish spirituous malt liquors, wine, or any other intoxicating beverages, on any part of any day set apart, or to be set apart, for any general or special election by the citizens in any election district or precinct in any of the counties of the state where an election is in progress, during the hours when by law in said district or precinct, the elections polls are required to be kept open.

SEC. 2. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor. [In effect March 7, 1874 Stats. 1873-4 p. 197.]

Act for the more effectual prevention of cruelty to animals.

SECTION 1. Any three or more citizens of the state of California, who have heretofore, or who shall hereafter incorporate as a body corporate under the general laws for incorporation in this state for the purpose of preventing cruelty to animals, may avail themselves of the privileges of this act; provided, that the corporate body first formed as aforesaid in any county, shall be the only one so entitled to the benefits and privileges of this act in said county.

SEC. 2. The said societies may make and adopt by-laws governing the admission of associates and members, providing for meetings, and for assistant and district or local officers, fixing, also, for means and systems for the effectual attainment of the objects contemplated by this act, for the regulation and management of its business affairs, and for the effect-working of the societies, prescribing also, the duties of their officers, for the outlay of all moneys and the auditing accounts, provided, that such by-laws shall not conflict with the laws of the state of California or of the United States, or with any provisions of this act.

SEC. 3. Said societies shall elect officers and fill vacancies according to the provisions of their by-laws.

SEC. 4. All sheriffs, constables, police and peace officers empowered to make arrest, for the violation of any of the provisions of this act, which by this act is denominated a misdemeanor, in the same manner as is by law provided for arrest in all cases of misdemeanors.

SEC. 5. All members and agents, and all officers of each or of the societies so incorporated, as shall by the trustees of said societies be duly authorized in writing, approved by the county judge of the county, and sworn in the same manner as constables and peace officers, shall have power to lawfully

weapons that such officers are authorized to use, that all such members and agents shall be arrested, exhibit and expose a suitable badge of said society. All persons resisting such officers, as such, shall, upon conviction, be guilty of a misdemeanor.

SEC. 6. Whoever overdrives, overloads, overworks, tortures, torments, starves, or sustenance, cruelly beats, mutilates, or procures to be so overdriven, overloaded, overworked, tortured, tormented, starved, or cruelly beaten, mutilated, any animal; and whoever, having the custody of any animal, either as owner or otherwise, inflicts injury upon the same, or fails to provide food, drink, shelter, or protection from the elements, or cruelly drives the same when unfit for service, shall, upon conviction, be deemed guilty of a misdemeanor.

SEC. 7. If any person shall carry, or use, or upon any vehicle, or otherwise, any animal in a cruel or inhuman manner, or knowingly inflicts or permits the same to be subjected to any pain, suffering, or cruelty of any kind, shall, upon conviction, be deemed guilty of a misdemeanor. Any person shall be taken into custody by any police officer or any other officer of the city, who may take charge of such vehicle, together with the horse or team attached to it, and deposit the same in some safe place.

animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement, where preparations are being made for exhibition of the fighting of birds or animals with the intent to be present as such exhibition, or is present at such exhibition, shall, upon conviction, be deemed guilty of a misdemeanor.

10. When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating in any way affecting dumb animals, are being or are about to be violated in any particular building or place, such magistrate shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or to any incorporated association qualified, as provided in this act, in connection of this act authorizing him to enter and search such building or place, and to arrest any person or persons present violating or attempting to violate any law relating in any way affecting dumb animals, and to bring such person or persons before some court or magistrate of competent jurisdiction, within the city or township within which the offense has been committed, to be dealt with according to law, and such attempt shall be held to be a violation of this act.

11. Any sheriff, constable, police or peace officer, or any person qualified, as provided in section five of this act, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present.

12. Any person who shall impound, or cause to be impounded in any pound any domestic animal, shall supply the animal during such confinement with a sufficient quantity of food and wholesome food and water, and in default thereof, upon conviction, be deemed guilty of a misdemeanor. No domestic animal shall be at any time impounded, confined and shall continue to be without necessary food and water for more than twelve consecutive hours. It shall be the duty of any person from time to time as it shall be deemed necessary, to enter it to and upon any pound in which any such animal shall be confined and supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry and the whole cost of such food and water may be collected by the owner of such animal and the said animal shall not be liable from levy and sale upon execution issued upon a judgment therefor.

13. Every owner, driver, or possessor of any old.

meanor; *provided*, that this shall not keep any old or diseased animal below premises with proper care. Every sick, crippled horse, ox, mule, cow, or other shall be abandoned on the public highway in any city or township, may, if peace officer, or officer of said society, or therefor, be killed by such officer; and all peace and public officers to cause the information of such abandonment.

SEC. 14. Every person convicted of a violation of this act, shall be punished as in and by law in this State, in the punishment of misdemeanors, and all fines in any county, under the provisions of the society in said county, organized herein provided, in aid of the benevolent incorporated.

SEC. 15. All prosecutions for the violation of the provisions of this act shall be conducted in a court of competent jurisdiction, and any person authorized, as provided in section five of the act, and prosecute in any of said courts, for a violation of the provisions of this act, whether or not a counsel at law; *provided*, that all such prosecutions be conducted in the name of the people of the State.

SEC. 16. In this act the singular shall be construed to include the plural; and the word "animal" shall be held to include every creature; the word "person" shall be held to include every individual.

used for food, or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated medical college or university of the state of California.

Sec. 18. The act entitled "an act for the more effectual prevention of cruelty to animals," approved March thirtieth, eighteen hundred and sixty-eight, and amendments thereto, approved March fifteenth, eighteen hundred and seventy-two, are hereby repealed. [In effect March 20, 1874. Stats. 1873-4, p. 499.]

An Act for the protection of buoys and beacons.

SECTION 1. Any person or persons who shall moor any vessel or boat of any kind, or any raft or scow, to any buoy or beacon placed in the waters of California by authority of the United States Light-house Board, or shall in any manner hang on to the same, with any vessel, boat, raft, or scow, or shall wilfully remove, damage, or destroy any such buoy or beacon, or any part of the same, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this state by the authority aforesaid shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months; one third of the fine in such case to be paid to the informer, and two thirds thereof to the Lighthouse Board, to be used in repairing said buoys and beacons.

Sec. 2. The cost of repairing or replacing any such buoy or beacon which may have been misplaced, damaged, or destroyed by any vessel, boat, raft, or scow being made fast to the same, shall when said cost shall have been legally ascertained, be a lien upon said vessel, boat, raft, or scow, and recovered against the same and the owner or owners thereof, in any action of debt, in any court of competent jurisdiction in this state. [In effect March 26, 1874. Stats. 1873-4, p. 619.]

An Act to enforce the educational rights of children.

SECTION 1. Every parent, guardian, or other person in the state of California having control and charge of any child or children between the ages of eight and fourteen years shall be required to send any such child or children to a public school for a period of at least two thirds of the time during which a public school shall be taught in each city, or city and county, or school district in each school year commencing on the first day of July in the year of our Lord one thousand eight hundred and seventy-four, at least twelve weeks of which shall be

consecutive, unless such child or children are excused from such attendance by the Board of education of the city and county, or of the trustees of the school district; or such parents, guardians, or other persons residing with such children, shall be deemed to have been satisfied that the condition has been such as to prevent attendance on application to study for the period required, if such parents or guardians are extremely poor, or sick, or that such children are taught in a private school, or at some other place, or have already acquired a good knowledge of the branches; provided, in case a public school is closed for three months during the year, within one mile of the nearest traveled road, of the residence of any person in the school district, he shall not be liable to the provisions of this act.

SEC. 2. It shall be the duty of the proper authorities of education, and of the clerk of each board of education in the state of California to cause to be posted in accordance with this law in the most public places in the city and county, or in the school district, or published in the newspapers therein for three weeks, in the month of June, the expense of each publication to be paid out of the funds of each city, or city and county, or school district, as the case may require.

SEC. 3. In case any parent, guardian, or other person shall fail to comply with the provisions of this act, such parent, guardian, or other person shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not more than fifty dollars; and for the second and each subsequent offense, the fine shall not be less than twenty dollars nor more than fifty dollars; and the parent, guardian, or other person so convicted, shall pay all costs. Each such fine shall be paid to the clerk of the proper board of education, or of the school district.

SEC. 4. And it shall be duty of the clerk of each board of education and of each board of district trustees, or of any teacher or taxpayer, to prosecute all offenses committed under the provisions of this act; and any clerk or teacher who fails to prosecute such offense within ten days after a warrant has been served on him by any teacher or taxpayer, shall be liable to a fine of not less than twenty dollars, which fine shall be paid to the clerk of the proper board of education, or of the school district, to be accounted for as in and to the effect of the provisions of this act.

act; and in case such prosecution fail, the expenses thereof shall be paid out of the school fund of the city, or city and county, or school district, in which the case arose.

Sec. 5. And it shall be the duty of the census marshal to furnish each board of education, and of district trustees, with a complete list of all children living within the jurisdiction of said board, and to return such lists and children not attending colleges, college schools, private schools, or being taught at home, who are made to the provisions of this act, and each teacher teaching within the limits of the jurisdiction of such board, shall be supplied with a list of all children within his or her department or school, and shall call such list each morning on the opening of school, and note the absences, and the reason of such absence, if any, and at the close of each term of twelve weeks, shall make a full report to the board of education, or of district trustees, of all such cases of absence, with the names both of children and parents, guardians, or other persons having such children in charge, and said board shall thereupon forthwith proceed to prosecute such parents, guardians, or other persons, according to the provisions of this act.

Sec. 6. And whereas, the state has provided an institution for the gratuitous instruction of all resident deaf and dumb or blind children between the ages of six and twenty-one years, every parent or guardian of any child or children afflicted with deafness or blindness, shall be required under the penalties hereinafore specified, to send such child or children to said institution for a period of not less than five years, unless such child or children shall have been excused by the authorities, and on the grounds specified in section one of this act.

Sec. 7. Any justice of the peace of the proper city, or city and county, or school district, shall have jurisdiction of all offenses committed under the provisions of this act. [Approved March 28. In effect July 1, 1874. Stats. 1873-4, p. 751.]

An Act to encourage the planting and cultivation of oysters.

SECTION 1. Any citizen of the United States may lay down and plant oysters in any of the bays, rivers, or public waters of this state; and the ownership of and the exclusive right to take up and carry off the same shall be continued and remain in such person or persons who shall have laid down and planted the same.

Sec. 2. Any person or persons who now have or who may hereafter lay down and plant oysters, as hereinafore provided, shall stake or fence off the land on which the same is or hereafter may be laid down and planted, and such stakes or fences

shall be sufficient marks of the boundaries and limits of the title such person or persons to the exclusive use and enjoyment thereof for the purposes prescribed in this act, provided nothing herein contained shall be deemed to create any impediments or obstructions to the navigation of any river or bay.

SEC. 3. Every person planting or laying down such oyster beds shall record a full description of said bed or beds with the recorder's office in the county where the same are located, and the recorder shall record the description so furnished, and to be kept by him for that purpose, to be entitled "Oyster beds."

SEC. 4. Any person or persons who shall enter upon any land in which there shall be oysters land down and when at the time of such entry shall be then doing so pursuant to the provisions of this act, and who shall take and carry off therefrom such oysters, without the permission of the occupants and owners thereof, shall fully destroy or remove, or cause to be removed, any stakes, marks, or fences intended to designate the boundaries and limits of any land claimed and staked off pursuant to the provisions of this act, shall be guilty of a misdemeanor.

SEC. 5. The penalties of the penal code relative to misdemeanors are hereby made applicable to any violation of the provisions of this act.

SEC. 6. All fines and penalties collected for a violation of any of the provisions of this act, over and above the costs of suit, shall be paid into the common school fund of the county where the offense was committed.

SEC. 7. All parties availing themselves of the provisions of this act shall erect, or cause to be erected, on some conspicuous part of the grounds devoted to the planting of oyster beds, a sign not less than six feet in length and one foot in width, which shall be painted in black letters upon a white background, the words "oyster beds."

SEC. 8. All acts and parts of acts in conflict with the provisions of this act, and especially "an act entitled 'An act concerning oysters,' passed April twenty-eight, one thousand eight hundred and fifty-one, as also the act entitled 'An act concerning oyster beds,' approved April seven, one thousand eight hundred and sixty-six, are hereby repealed.

SEC. 9. This act shall not apply to any tide lands of the state may have sold to private parties; provided, however, that nothing herein shall be so construed as to deprive the right of the state to sell and dispose of any of its lands, nor to affect in any manner the rights of private parties in the sale of tide lands by the state. (In effect March 1, 1834, Stats. 1873-4, p. 940.)

An Act to protect lumber manufacturers.

SECTION 1. Every person who maliciously drives into, or places within any saw-log, slingle-bolt, or other wood, any iron steel or other substance sufficiently hard to injure saws, knowing that the said saw-log, slingle-bolt or other wood, is intended by the owner thereof to be manufactured into any kind of lumber is guilty of a felony, and shall be punished by imprisonment in the state prison not less than one nor more than five years. [In effect February 9, 1876. Stats. 1875-6, p. 92.]

An Act to prevent the leaving open of inclosures, and hunting on inclosed lands.

SECTION 1. Every person who shall open any gate, bar, or fence of another, for the purpose of passing through, and shall willfully leave the same open, without the permission of the owner, is guilty of a misdemeanor.

SEC. 2. Every person who willfully opens, tears down, or otherwise destroys any fence on the inclosed land of another, is guilty of a misdemeanor.

SEC. 3. Every person who willfully enters upon the inclosed land of another for the purpose of hunting, or who discharges fire-arms or lights camp-fires thereon, without first having obtained permission of the owner or occupant of said land, is guilty of a misdemeanor.

SEC. 4. Every person who willfully, carelessly, or negligently while hunting or camping upon the inclosed land of another, kills, maims, or wounds an animal, the property of another is guilty of a misdemeanor.

SEC. 5. Every person who, upon departing from camp, willfully leaves the fire or fires burning or unextinguished is guilty of a misdemeanor.

SEC. 6. Every person found guilty of any of the misdemeanors herein mentioned shall be fined not less than twenty nor more than fifty dollars, and shall be imprisoned in the county jail until such fine be satisfied, not exceeding one day for every two dollars thereof.

SEC. 7. All acts and parts of acts in conflict herewith are repealed, *provided, however*, nothing herein contained shall be construed as repealing section five hundred and ninety-four of the penal code.

SEC. 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Santa, San Benito, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, San Luis Obispo, Plumas, Lassen, Siskiyou, Modoc, ~~Shasta~~, Trinity, Sierra, Placer. [In effect March 23, 1876. Stats. 1875-6, p. 40.]

An Act concerning lodging houses and sleeping places.

SECTION 1. Every person who owns, leases, or lets to any person or persons, any room or apartment in any building, house or other structure, within the limits of any incorporated city, or city and county, within the state of Iowa, for the purpose of a lodging or sleeping place, in which room or apartment contains less than five hundred cubic feet of space, in the clear, for each person occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by a fine of not less than fifty (50) dollars or more than five hundred (500) dollars, or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment.

SEC. 2. Any person or persons found sleeping in any room or apartment which contains less than five hundred (500) cubic feet of space, in the clear, for each person occupying such room or apartment shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten (10) or more than fifty (50) dollars, or by both such fine and imprisonment.

SEC. 3. It shall be the duty of the chief of police or other person to whom the police powers of a city or county are delegated to detail a competent and qualified officer of the regular force to examine into any violation of the provisions of this act, and to arrest any person guilty of such violation.

SEC. 4. The provisions of this act shall not be construed to apply to hospitals, jails, prisons, insane asylums or other public institutions.

SEC. 5. All acts or parts of acts in conflict with the provisions of this act are hereby repealed. [In effect April 1, 1876. Stats. 1875-6, p. 759.]

An Act for the incorporation of societies for the prevention of cruelty to children.

SECTION 1. Any five or more persons of full age and of whom shall be citizens and residents within the state of Iowa, shall desire to associate themselves together for the purpose of preventing cruelty to children, may make, sign, and subscribe, before any person authorized to take acknowledgments of deeds of this state, an instrument in writing, which shall state the name of the society, the purpose and objects of such society, the number of members, and the names of the persons who shall be the officers of the same, and also, in the office of the clerk of the state and, also, in the office of the clerk of the county in which the business of the society is to be conducted, a certificate in writing, in which shall be stated the name of the society, which said society shall be known in law, the purpose and objects of such society, the number of members, and the names of the persons who shall be the officers of the same.

rectors, or managers, to manage the same, and the names of the trustees, directors, or managers of the society for the first year of its existence; but such certificate shall not be filed unless the written consent and approbation of the district judge of the district in which the place of business or principal office of such society shall be located, be indorsed on such certificate.

SEC. 2. Upon filing the certificate as aforesaid, the persons who shall have signed and acknowledged such certificate, and their associates and successors, shall thereupon, by virtue of this act, be a body politic and corporate by its name stated in such certificate, and as such shall have power:

First—To have perpetual succession by its corporate name.

Second—To sue and be sued, complain and defend, in any court of law or equity.

Third—To make and use a common seal, which may be affixed by making an impression directly in the paper, and alter the same at pleasure.

Fourth—To appoint such officers, managers, and agents, as the business of the corporation may require.

Fifth—To make by laws, not inconsistent with the laws of this state or of the United States, for the management of its property and the regulation of its affairs.

Sixth—To contract and be contracted with.

Seventh—To take and hold by gift, purchase, grant, devise, or bequest, any property, real or personal, and the same to dispose of at pleasure. But such corporation shall not, in its corporate capacity, hold real estate the year in one derived from which shall exceed the sum of fifty thousand dollars.

Eighth—To exercise any corporate powers necessary for the exercise of the powers above enumerated and given.

SEC. 3. Any society so incorporated may prefer a complaint before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children, and may add in bringing the fact before such court or magistrate in any proceeding taken.

SEC. 4. All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid the society so incorporated, its officers, members, and agents, in the enforcement of all laws which now are or may hereafter be enacted relating to or affecting children.

SEC. 5. The provisions of this act shall not extend or apply to any association or individuals who shall in the certificate filed as hereinabove provided, use or specify a name or style the same or substantially the same, as that of any previously existing incorporated society in this state. (In effect April 3, 1876. Stats. 1875-6, p. 80.)

stage coach, wagon, railroad train, or
engaged at the time in carrying passengers
anywhere within this State: the reward to
or persons making the arrest, immedi-
ately of the person or persons so arrested,
be paid except after such conviction. [L
Stats. 1845-6, p. 85.]

*An Act to regulate the use of artesian wells,
and to prevent the waste of subterranean waters.*

SECTION 1. Any artesian well which is
furnished with such mechanical apparatus
as effectively arrest and prevent the flow of
water is hereby declared to be a public nuisance,
and the owner or occupant of the land upon which such
cause, permits, or suffers such well to be
permitted to remain or continue, is guilty of a
misdemeanor.

SEC. 2. Any person owning, possessing,
land upon which is situated an artesian well,
and who permits the water to unnecessarily
or to go to waste, is guilty of a misdemeanor.

SEC. 3. An artesian well is defined, for
the purpose of this act, to be any artificial well the waters of
which flow continuously over the natural surface of the
land at any season of the year.

SEC. 4. Waste is defined, for the purpose
of this act, to be the causing, suffering, or permitting of
the water of such well to run into any river, stream, or
other body of water.

or more than fifty dollars. There shall, also, upon conviction had, in addition to such fine, be taxed against such party the cost of prosecution. Such fine and costs may be collected as in other criminal cases, and the justice may also, as an execution upon the judgment therein rendered, and the same may be enforced and collected as in civil cases.

Sec. 6. It shall be the duty of the supervisors or roadsters, on complaint of any citizen within their respective districts, and for that purpose may at all proper times enter on the premises where such well is situated; and it shall be the duty to institute or cause to be instituted criminal action for all violations of the provisions of this act in regard to public wells deemed to be not committed within such district.

Sec. 7. An act entitled "an act to regulate the use of artesian wells, and to prevent the waste of subterranean waters in San Bernardino and Los Angeles counties," approved March eighth, eighteen hundred and seventy-six and all other acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Sec. 8. This act shall not apply to artesian wells in the county of San Bernardino. [Approved March 9, 1878. In effect July 1, 1878. Stats 1877-8, p. 195.]

Act to prohibit "Piece Clubs," and to prevent extortion from candidates for office

SECTION 1. All payments and contributions of money for the expenses made by candidates for office in this state, hereafter be assessed and made by each candidate by voluntary assessment among themselves, and not otherwise. Meetings to be called for such purpose, at which meetings all candidates for office at the next ensuing election shall be present or participate.

Sec. 2. Any person being a candidate for office in this state, who shall directly or indirectly pay or knowingly cause to be paid any money or other valuable thing to any person, as an assessment or contribution for the expenses of the election at which such person or candidate is to be voted for, except the contribution or assessment so agreed upon by such meeting of candidates, shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

Sec. 3. It shall not be lawful for any committee, convention, or other association formed for the purpose of nominating a candidate or candidates for office in this state, to levy, assess, collect, demand, or receive directly or indirectly, any money or other valuable thing from any candidate or candidates nominated for office by such committee, convention, or other association, either for the expenses of printing or

authorize, assist, or consent to any collection from any candidate or candidate guilty of a misdemeanor, and, on conviction, shall be deemed guilty of a misdemeanor.

SEC. 5. Any person who shall demand, receive, either directly or indirectly, any money from any candidate or candidate, on the ground that such money has been assessed to such candidate or demanded, or required by any person, committee, or other political association, for printing or distributing tickets, or for expenses of any kind or nature whatsoever of such nominating committee, shall, for each offense, be deemed guilty of a misdemeanor, and, on conviction, shall be fined not more than one hundred dollars, but nothing herein contained shall prevent any election from assembling together for the purpose of raising money for the common good of the ticket and to employ the same by agents appointed for such purpose.

SEC. 6. Any person who shall voluntarily offer to work for and assist, or in any manner contribute to the nomination or election of any person to any office in this state, for the intent to have such candidate or person in any manner compensate such person for such services, shall be deemed guilty of a misdemeanor, and, on conviction, shall be

able by imprisonment in the county jail for a term not less than fifty nor more than two hundred days, or by a fine not less than fifty nor more than two hundred dollars, or by both such fine and imprisonment. [In effect March 26, 1878. Stats. 1877-8, p. 535.]

Act to punish and prohibit the sale of adulterated syrup.

SECTION 1. Any person who shall knowingly sell, or keep, offer for sale, or otherwise dispose of any syrup, or golden tips syrup, silver drops syrup, or molasses containing muriatic or sulphuric acids, or glucose, or adulterated with any other substance to improve the color thereof shall be guilty of misdemeanor.

SEC. 2. Any person violating the provisions of section one of this act shall be punished, and imprisoned in the county jail of the county in which the offense was committed, for a period not exceeding six months or by a fine not exceeding five hundred dollars, or both. [In effect March 29, 1878. Stats. 1877-8, p. 695.]

Act to protect stockholders and persons dealing with corporations in this State.

SECTION 1. Any superintendent, director, secretary, manager, agent, or other officer, of any corporation formed or existing under the laws of this state, or transacting business in this state, and any person pretending or holding himself out as such superintendent, director, secretary, manager, agent, or other officer, who shall wilfully subscribe, sign, endorse, verify, or otherwise assent to the publication, either generally or privately, to the stockholders or other persons dealing with such corporation, or its stock, any untrue or wilfully and fraudulently exaggerated report, prospectus, account, statement of operations, values, business profits, expenditures, or prospects, or other paper or document intended to produce or give, having a tendency to produce or give, to the shares of stock of such corporations a greater value, or less apparent or market value than they really possess, or with the intention of defrauding any particular person or persons, or the public, or persons generally, shall be deemed guilty of a felony and on conviction thereof, shall be punished by imprisonment in the state prison or county jail not exceeding two years, or by a fine not exceeding five thousand dollars, or by both: *provided*, that this act shall be construed to apply only to corporations whose capital stock has been or shall hereafter be listed at a stock board or stock exchange in this state, or whose shares be regularly bought and sold in the stock market of this state. [Approved March 29, 1878. Stats. 1877-8, p. 695.]

An Act for the protection of children, and to prevent and punish certain wrongs to children.

SECTION 1. No minor, under the age of sixteen years, shall be admitted at any time to, or permitted to remain in, any saloon or place of entertainment where any spirituous liquors, or wines, or intoxicating or malt liquors are sold, or given away, or at places of amusement in houses and concert saloons, unless accompanied by a guardian. Any proprietor, keeper, or manager of any place who shall admit such minor to, or permit him to remain in any such place, unless accompanied by a guardian, shall be guilty of a misdemeanor.

Sec. 2. Every person having the care, custody, or control of any child under the age of sixteen years, shall prevent such child from begging, whether actually begging, or under the pretext of peddling. Any person offending against this section shall be arrested and brought before a court of law, and for the first offense shall be reprimanded, and for a subsequent offense shall be guilty of a misdemeanor.

Sec. 3. Any child, apparently under the age of sixteen years, that comes within any of the following descriptions named:

(a) That is found begging, or receiving or gathering alms (whether actually begging, or under the pretext of offering for sale, anything), or being in any street or public place for the purpose of so begging or receiving alms.

(b) That is found wandering and not having any settled place of abode, or proper guardianship, or means of subsistence.

(c) That is found destitute, either being an orphan, or having a vicious parent, who is undergoing penal imprisonment.

(d) That frequents the company of reputed prostitutes, or houses of prostitution or assignation, or houses, concert saloons, theaters, and variety shows, as defined in the first section of this act, without lawful excuse, shall be arrested and brought before a court of law.

When, upon examination before a court or magistrate, it shall appear that any such child has been engaged in the aforesaid acts, or comes within any of the above descriptions, such court or magistrate, when it shall be expedient for the welfare of the child, may commit the child to an orphan asylum, society for the prevention of pauper children, charitable or other institution, or such other disposition thereof as now is or may hereafter be by law in cases of vagrant, truant, disorderly, pauper, or neglected children.

1. No child under restraint or conviction, apparently the age of sixteen years, shall be placed in any prison, or of confinement, or in any court-room, or in any vehicle or transportation to any place, in company with adults with or convicted of crime, except in the presence of a judicial officer. [In effect Mar. 30, 1878. Stats. 1877-8, p. 812.]

An Act relating to children.

SECTION 1. Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody, or control of any child under the age of sixteen years, who shall use, or employ, or who shall in any manner, or under pretense, sell, appraise, give away, let out, or otherwise dispose of any such child to any person, under any name, title, name, in or for the vocation, occupation, service, or purporting, playing on musical instruments, rope or wire, dancing, begging, or peddling, or as a gymnast, acrobat, or st. or rider, in any place whatsoever, or for or obscene, indecent, or immoral purpose, exhibition, or in whatsoever, or for or in any indecent or wandering in whatsoever, or for or in any business, exhibition, or in injurious to the health, or dangerous to the life or of such child, or who shall cause, procure, or encourage such child to engage therein, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not less than six months, or by both such fine and imprisonment; and that nothing in this section contained shall apply to the employment or use of any such child, as a singer or musician in any church, school, or academy, or the teaching of the science or practice of music, or the employment of any such child as a musician at any concert or musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the city where such concert or entertainment shall take place.

2. Every person who shall take, receive, hire, employ, harbor or have in custody, any child under the age of sixteen years, for the purposes mentioned in the preceding section, shall be guilty of a like offense and punished by a like punishment therein provided.

3. When, upon examination before any court or magistrate, it shall appear that any child, within the age previously provided in this act was engaged or used for or in any business, exhibition, or vocation, or purpose designated, and as provided in this act, and when upon the conviction of any person, the custody of a child of a criminal assault upon

tion has been situated, shall be certified to by the county clerk of said county wherein said trials and inquests have been held to the board of state prison directors for their approval, and after such approval they shall pay the same out of the moneys appropriated for the support of the state prison to the county treasurer of said county wherein said trials have been held; "provided, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and eighty-three."

Sec. 2. This act shall only apply to cases which have not been settled for by the state.

Sec. 3. This act shall take effect immediately.

Act supplemental to and amendatory of an Act entitled "An Act to regulate the practice of medicine in the State of California," approved April 8d, 1876.

Sec. 7. Any person practicing medicine or surgery in this state, without first having procured a certificate to so practice from one of the boards of examiners appointed by one of the societies mentioned in section two of this act, shall be deemed guilty of a misdemeanor, and shall be subject to the penalties provided in section thirteen of the act to which this act is supplementary and amendatory, but no person who holds a certificate from one of such boards of examiners, or who holds a certificate heretofore granted by the board of examiners heretofore existing by virtue of appointment by the California medical society of homeopathic practitioners, shall be compelled to procure a new certificate. And all powers and privileges of said boards of examiners, under the act to which this act is supplementary and amendatory, are hereby transferred to the boards of examiners created by this act.

Sec. 8. Any person assuming to act as a member of a board of examiners, under this act or under the act to which this act is supplementary and amendatory, or who shall sign, or subscribe, or issue, or cause to be issued, or seal, or caused to be sealed, a certificate authorizing any person to practice medicine or surgery in this state, except the person so acting and being appointed by one of the societies mentioned in section two of this act, or be authorized so to do by a board of examiners appointed by one of said societies, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars, or by imprisonment in the county jail for a term of not less than thirty nor more than three hundred and sixty-five days, or by both such fine and imprisonment. (In effect April 1, 1878. Stats. 1877-8, pp. 920-21.)

An Act in relation to warehouse and wharfing and other matters relating thereto.

SEC. 10. Any warehouseman, wharfinger, person, who shall violate any of the foregoing provisions of this act, is guilty of felony, shall be subject to punishment upon conviction, shall be fined in a sum not exceeding one thousand dollars (\$1,000), or imprisoned in any of the state prisons not exceeding five years, or both. Any person aggrieved by the violation of any of the provisions of this act may have and maintain an action against any person or persons violating any of the foregoing provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted or not. [Approved April 1, 1878. Stats. 1877 & p.

An Act in relation to the House of Correction of the County of San Francisco.

SECTION 1. The board of supervisors of the city and county of San Francisco are hereby authorized to maintain and support in said city and county the institution now existing, and known as the house of correction, and to make all regulations thereto as the same may be required and to make all proper rules and regulations for the discipline, management and employment of persons committed to said house of correction, by any court of said city and county.

SEC. 2. In making rules and regulations, as provided in the preceding section, the board of supervisors shall endeavor, as far as possible, to prevent crime, reform prisoners, and support the house of correction self-supporting.

SEC. 3. All persons appearing for sentence in the judge's court, the city criminal court, or the municipal court of the city and county of San Francisco, who may be sentenced to imprisonment in the county jail or prison, may, instead thereof, be by the proper court sentenced to imprisonment in the house of correction, in said county, subject, however, to the provisions of this act; and no person shall be sentenced to imprisonment in the house of correction except under the provisions of this act.

SEC. 4. No person shall be sentenced to imprisonment in the house of correction for a shorter or longer term than for which he might be sentenced in the county jail or state prison, and in no case whatever for a term less than three months, nor for a longer term than that for which a person who might be sentenced to imprisonment in the county jail or state prison shall be sentenced to imprisonment in the

tion, if he is more than twenty-five years of age, if he has been once before convicted of a felony, or twice before convicted of petit larceny, not unless, in the opinion of the court, imprisonment in the house of correction will be more for his best than imprisonment in the state prison, and equally for the interest of the public. The fact of a previous conviction may be found by the court upon evidence introduced at the time of sentence.

Sec. 5. Persons imprisoned in the house of correction may be put to work on the public works and other property of the city and county of San Francisco, or may be employed at any other work, as the board of supervisors of said city and county may direct. And the said board of supervisors may, so far as may regard to economy with regard to the learning of trades by persons whose terms of imprisonment in said house of correction are of sufficient length, and who have the capacity requisite therefor, employ them to work industriously thereat.

Sec. 6. The superintendent shall give his personal attention to the duties of his office, and shall, at the house of correction, and the board of supervisors shall provide the means and board for him, and for the men and women whose presence may be required in and about said house.

Sec. 7. The third section of an act entitled "an act to utilize the prison labor and govern the house of correction of the city and county of San Francisco" approved March thirty-first, eighteen hundred and seventy-six, and all acts and parts of acts so far as they are inconsistent with this act, are hereby repealed, provided, that all offenses committed before this act takes effect shall be regarded as prosecuted, and punished in the same manner as if this act had not passed.

Sec. 8. Every person who shall at the time of the passage of this act, be confined in the house of correction under or by virtue of a sentence of imprisonment in the county jail may remain in the house of correction to the term of imprisonment all expired, and, so far as relates to him, the house of correction shall be deemed to be the county jail, and he shall be under the charge and keeping of the superintendent, who shall have the same power over him that the sheriff might exercise if he was in fact in the county jail. Where any such person shall be in charge of the superintendent is above provided, the sheriff shall be under no responsibility in regard to him, it not being deemed to prevent the sheriff from removing any person any other person from the house of correction to the county jail. Nothing in this act shall be construed to abolish in any way to interfere with the government or control of the county of San Francisco county jails of said city and county by the sheriff of said city and county. (Approved April 1, 1878. 1877-8, p. 253. In effect thirty days after passage.)

CERTIFICATES OF STOCK.
An Act imposing a tax on the issue of
SECTION 1. It shall be corporations.
poration in the state of
EDUCATION

SECTION 1. It shall be lawful for the incorporation in the state of California to issue any person requiring the issue to him of stock in such corporation, a fee of ten dollars certificate, whether such certificate be the issue on transfer, and such certificate shall not be given until such fee shall be paid.

SEC. 2. It shall be the duty of every corporation, on the first day of January, 1901, to file with the Secretary of State a list of the names of the persons who are entitled to the stock of such corporation, on the first day of January, 1901.

SEC. 2. It shall be the duty of the secretary of each corporation, on the first Monday in January, October, of each year, to make returns showing the amount of the tax on the corporation, or officer acting as tax collector, during the quarter preceding, and pay to the collector the sum of ten cents in coin for each and every certificate issued by the corporation of water stock, by said corporation, except that in the City and County of San Francisco such returns and payments shall be made to the collector, or officer engaged in the collection of such tax.

Sec. 3. Such tax collector, or his duly authorized and empowered to examine such returns, as to the truth of said returns, so far as they show the basis of such corporation, and the transfer of stock, or issue of certificates, and if not correct, then he is authorized to sue against such corporation in any court of competent jurisdiction, in the name of the State of New York, to the effect that

the office of Commissioner of Transportation, as auditors and duties, to fix the maximum transporting passengers and freight on certain roads to prevent extortion and unjust discrimination.

—EXTORTIONS, DISCRIMINATIONS, FORFEITURES, AND PENALTIES.

A railroad company shall be deemed guilty of the following cases:

When it shall wilfully charge, demand, or receive from any passenger as his fare from one station or place to another, a greater sum than is specified as the fare between such stations or places for the same class of passage and in the same direction, in its tariff of fares on file with the commissioner of transportation.

When it shall wilfully charge, demand, or receive from any person or persons, as the rate of freight on goods or merchandise, any greater sum than is specified as the rate for the same quantity of goods or merchandise of the same class between the same places and in the same direction in its printed tariff on file with said commissioner.

When it shall wilfully charge, collect, or receive from any person or persons a greater amount of rate of toll or fee, than it shall at the same time charge, collect, or receive from any other persons for receiving, landing, delivering freight of the same class and like quantity at the same place.

When it shall wilfully charge, demand, or receive from any person or persons any greater sum for passage or freight from any other person or persons, between the same stations or places, in the same direction, for the same class of passage or for the like quantity of goods of the same class.

When it shall wilfully charge, demand, or receive from any person or persons for receiving, storing, landing, or delivering, or for carting any lot of goods or merchandise any greater sum than it shall, by or through any of its authorized agents, contract, have agreed to charge for such services in the performance thereof.

A railroad company shall be deemed guilty of discrimination in the following cases:

When it shall directly or indirectly wilfully charge, demand, or receive from any person or persons any less sum for passage or freight than from any other person or persons for the same class of passage or for the like quantity of goods of the same class, at the same time, between the same places and in the same direction, for the same class of passage or for the like quantity of goods of the same class.

When it shall directly or indirectly wilfully charge,

to provide passage to and from the following persons:

First—Directors, officers, agents, and party, and their families.

Second—Officers and agents, and other railroads, and telegraph, express or steamship companies.

Third—Domestic persons.

Fourth—The commissioner of transportation and employees, when traveling on official duties.

Fifth—Public messengers, troops, and, under existing laws, or any contract with this state, to be transported.

Every such railroad company shall keep passes issued by it, except such as are for agents, employees and their families, and thereof, and of the number of times used, and shall report the same to the commission whenever required.

SEC. 4. If any such railroad company, as defined in section one of this act, shall refuse to transport, or shall refuse to pay to the person or persons so transported, the amount of the damages sustained by them, with the costs of suit, to be recovered in any court of competent jurisdiction.

SEC. 5. If any such railroad company shall refuse to transport, or shall refuse to pay to the person or persons so transported, the amount of the damages sustained by them, with the costs of suit, to be recovered in any court of competent jurisdiction.

commissioner for the completion of the work required until such work shall be actually completed.

SEC. 8. If any such railroad corporation neglects or refuses to file its tariff of freight and fares as provided in section six, or to make its annual report, as provided in section seven of chapter one of this act, it shall forfeit not less than one hundred nor more than one thousand dollars per day for each and every day of such neglect or refusal.

SEC. 9. Any person aggrieved thereby, who may be unable to obtain satisfaction from the proper officers of any railroad in this state, may report to the commissioner of transportation any violations of the provisions of this act by any railroad company doing business therein, or by any of its officers, agents, or employees, and it shall be the duty of the commissioner to make a prompt investigation of such charges.

SEC. 10. Whenever it shall come to the knowledge of the commissioner that the provisions of this act have been violated by any railroad company, and the facts in his judgment warrant a prosecution therefor, he shall immediately give notice thereof to the district attorney of the county in which such violation occurred, and thereafter by made the duty of said district attorney to commence and prosecute, in a court of competent jurisdiction, an action against any railroad company that shall have been guilty of such violation.

SEC. 11. All fines, forfeitures and penalties for violations of the provisions of this act herein provided shall be recovered by action in the name of the people of the state of California. Such action shall be brought and prosecuted upon complaint of the commissioner or the person aggrieved by the district attorney of the county in which such violation occurred, and all costs, expenses and attorney's fees on account of such fines, penalties, and forfeitures shall be paid into the state treasury for the benefit of the people of the state. It is hereby made the duty of the attorney general to counsel, advise, and assist the commissioner of transportation whenever he shall be requested by him so to do concerning any and all acts or proceedings, matters, things, persons and cases and dates mentioned in the provisions of this act. He may also institute and prosecute any action or proceeding which may be necessary to the enforcement of the provisions of this act, and he may appoint, discontinue, or discharge any attorney or any other person designated by any court or by him, as provided herein, or in his judgment the public interest will be subserved thereby.

CHAPTER THREE. POLICE REGULATIONS.

SECTION 1. In forming a train on any railroad no freight, merchandise, or lumber cars shall be placed in the rear of passenger

passenger cars, and if they or any of them shall be so placed by an officer or agent who so directed, or who knowingly approved such arrangement of cars, and the conductor of the train, he shall be guilty of a misdemeanor, and shall be punished accordingly.

SEC. 2. No company operating any railroad in this State shall, in carrying and transporting cattle, sheep, or other animals, load lots confine the same in cars for a longer period than thirty-six consecutive hours, without unloading for rest and feeding, for a period of at least ten consecutive hours. In estimating such time of confinement, the period during which the animals have been confined without such rest or feeding on roads from which they are received shall be computed. In case the owner or person in charge of such animals neglects to pay for the care and feed of animals so confined, the railroad company may charge the expense thereof to the owner or consignee, and retain a lien upon the animals until the same is paid.

SEC. 3. When any freight train on any railroad stands in such a position as to obstruct the ordinary travel on a highway, for a longer period than ten minutes, the person having charge of such train shall cause it to be so placed as to leave one street or highway open to its full width to accommodate the public travel; and any railroad company or its employment any person shall be, who shall violate this section, shall forfeit and pay the sum of twenty-five dollars for each offense.

SEC. 4. Whoever enters upon or crosses any railroad or any private passway which is inclosed by bars or gates,

said, by reason of such intoxication, shall do any act, or neglect any duty, which act or neglect shall cause the death of, or bodily injury to any person or persons, he shall be deemed guilty of a felony.

SEC. 7. The governor may, from time to time, upon the application of any railroad or steamboat company, commission during his pleasure, one or more persons designated by such company who, having been duly sworn, may act at its expense as policemen, with the powers of a deputy sheriff upon the premises used by it in its business, or upon its cars or vessels. The company designating such person shall be responsible civilly for any abuse of his authority.

SEC. 8. Every such policeman, when on duty wear in plain view a badge bearing the words "railroad police" or "steamboat police," as the case may be, and the name of the company for which he is commissioned.

SEC. 9. Every person who eludes fraudulently evade or attempt to evade the payment of his fare for traveling on any railroad shall be fined not less than five nor more than twenty dollars.

SEC. 10. An act entitled "an act to provide for the appointment of commissioners of transportation, to fix the maximum charges for freights and fares, and to prevent extortion and discrimination on railroads in this state," approved April third, eighteen hundred and twenty six, is hereby repealed, and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed so far as they conflict herewith. In effect April 1, 1878. Stats 1877-8, pp. 982-86.)

An Act to protect public health from infection caused by exhumation and removal of the remains of deceased persons.

SECTION 1. It shall be unlawful to disinter or exhumate from a grave, vault or other burial place, the body or remains of any deceased person, unless the person or persons so doing shall first obtain, from the board of health, health officer, mayor, or other head of the municipal government of the city, town, or city and county where the same are deposited, a permit for said purpose. Nor shall such body or remains be entered, examined, or taken from any grave vault or other place of burial or deposit, be removed or transported through the streets or highways of any city, town, or city and county, and no the person or persons removing or transporting such body or remains shall first obtain, from the board of health, or health officer (if such board or officer is not) and from the mayor or other head of the municipal government of the city or town or city and county, a permit in writing, so to remove or transport such body or remains in and through such streets and highways.

Sec. 2. Permits to disinter or exhume the remains of deceased persons, as in the last section granted, provided the person applying therefor shall obtain a certificate from the coroner, the physician who attended the deceased person, or other physician in good standing, of the facts, which certificate shall state the cause of the disease of which the person died, and also the date of such decease; and provided, further, that the remains of deceased shall be inclosed in a metal case of such scale in such manner as to prevent, as far as possible, noxious or offensive odor or effluvia escaping therefrom; that such case or coffin contains the body or remains of one person, except where infant children of the deceased, or parents, or parent and children are contained therein or coffin. And the permit shall contain the name of the deceased, and the words "permit to remove and transport the body of —, age —, sex —," and the name, age, sex, and residence of the person applying therefor, and shall be written therein. The officer of the municipal government of the city or town, or city and county, granting such permit shall require to be paid for each permit the sum of \$1.00, to be kept as a separate fund by the treasurer and to be used in defraying expenses of and in respect to the removal and for the inspection of the metallic cases, coffin and inclosing boxes herein required; and an account of such fund shall be embraced in the accounts and statements of the treasurer having the custody thereof.

Sec. 3. Any person or persons who shall disinter or remove, or cause to be disinterred, exhumed or removed from a grave, vault, or other receptacle or burial place, the body or remains of a deceased person, without a permit therefor, shall be guilty of a misdemeanor, and be punished by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Nor shall it be lawful to receive such body or remains on any vehicle, car, barge, boat, steamboat, or vessel, for transportation in or from the city, unless the permit to transport the same is first obtained, and is retained in evidence by the owner, driver, agent, or attendant or master of the vehicle, car, or vessel.

Sec. 4. Any person or persons who shall move or cause to be moved or transported, on any street, highway or any city or town or county, the body or remains of a deceased person, who shall have been disinterred or exhumed without a permit as described in section two of this act, shall be guilty of a misdemeanor, and be punishable as provided in section three of this act.

* Any person who shall give information to secure the violation of any person or persons for the violation of provisions of this act, shall be entitled to receive the sum of five dollars, to be paid from the fund collected from fines and accruing under this act.

§. Nothing in this act contained shall be taken to apply to the removal of the remains of deceased persons from one place of interment to another cemetery or place of interment within the same county; *provided*, that no permit shall be required for the disinterment or removal of any body unless it has been buried for two years. [Approved April 1, 1877, to take effect thirty days after passage. Stats 1877-8, p. 1050.]

To promote emigration from the state of California.

§. 1. It shall be unlawful for the owners, officers, or employees of any steamship company, sailing vessel, or railroad company, or firm, or corporation that may be in this state in the transportation of passengers to any foreign port, to withhold or refuse any person the right to purchase a passage ticket or tickets to any foreign country, for the reason that he or they have not a certificate, card, or other document whatsoever, that such person has paid in full, or in part, any or all debts or demands, or otherwise, or any sum whatsoever, to any society, company, corporation, association, or individual, or firm, and any person or corporation who shall violate the provisions of this section, or in pursuance of any contract, oral or written, refuse to sell a passage ticket to any person to any foreign country shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than one hundred nor more than five hundred dollars; and that nothing in this section shall be construed in any way to apply to any passport or other document required to be presented, having the signature or seal of any consular agent resident within this state. [In effect March 26, 1880, p. 15, Ban. Ed. 50.]

Concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the state prison, and the costs of the trial of escaped convicts, and the expenses of coroner inquests in said prison.

§. 1. The costs and expenses of all trials which have been had in the county in this state where the state prison is situated, for any crime committed by any convict in the prison, and the costs of guarding and keeping such convict, and the execution of the sentence of said convict by the state, and the costs and expenses of all trials heretofore

APPENDIX — 23.

that for the purpose of the
the same shall be deemed to be
off any person a day after the
person has been notified in
writing of such removal. The
person to be removed shall be
notified in writing by the
person in charge of the
department of the
person to be removed. The
person to be removed shall be
notified in writing by the
person in charge of the
department of the
person to be removed.

Sec. 2. This act shall be
enacted for by the
p. 22, Sec. 2.

As to the removal of
any officer of a
state, who shall be removed
of his office, or by reason of
disability, or by reason of
death, and no other cause
shall be stated in the notice
of removal in the journal
of the proper authority. The
person to be removed shall be
notified in writing by the
person in charge of the
department of the
person to be removed.

Any person violating the provisions of this act guilty of a misdemeanor, and shall be punishable by imprisonment in the county jail not less than one month nor six months, or by a fine of not less than twenty-
 nor more than two hundred dollars, or by both imprisonment. [In effect April 16, 1880. Stats. 1880, Ban. Ed. 311.]

Act for the protection of certain kinds of fish.

1. From and after the passage of this act, and the first day of July, A.D. eighteen hundred and eighty-
 shall be unlawful for any person to catch any of the fish in the public waters of this state, except by means of a line.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, be punished as follows: For the first offense, by a fine not less than fifty dollars, or imprisonment in the county jail not less than fifty days, or both such fine and imprisonment for the second, and each subsequent offense, by a fine not less than two hundred and fifty dollars, or by imprisonment in county jail for a period of not less than two months and fifty days, or both such fine and imprisonment.

Any person giving information which leads to the conviction of any person or persons for violating the provisions of this act shall, upon the conviction of such person or persons, be entitled to receive one-half of the fine imposed upon the person or persons. [In effect April 16, 1880. Stats. 1880, Ban. Ed. 345.]

To provide for the construction, maintenance and regulation of fishways in streams naturally frequented by salmon, and other migratory fish.

1. It shall be the duty of the state board of commissioners to examine, from time to time, all dams and obstructions in all rivers or streams in this state, naturally frequented by salmon, shad or other migratory fish, and in their opinion, there is not free passage for fish over any dam or artificial obstruction, to notify the owners or occupants thereof to provide the same within a specified time in a durable and efficient fishway of such form and location as shall be determined by the commissioners, or person authorized by them. If such fishway is not completed to the satisfaction of said commissioners within the time specified, the owners or occupants of any dam or artificial obstruction shall be deemed guilty of a misdemeanor, and may be prosecuted by action on complaint.

before any justice's court or justice of the peace in the county where such dam or artificial obstruction is situated. Upon conviction, shall be fined two hundred and fifty dollars, and the plaintiff shall recover full costs; and upon appeal the fine shall be for the benefit of and shall be paid to the person making the complaint, and the other half shall be paid to the state treasury for the benefit of the fund for protection and restoration of fish, and may be expended by the state board of fish commissioners in their discretion for the construction and maintenance of fishways.

SEC. 2. It shall be incumbent upon the owners or tenants of all dams or artificial obstructions where the state board of fish commissioners require such fishways to be provided, to keep the same in repair and open and unobstructed to the passage of fish at all times, and any owner or occupants of any such dam or artificial obstruction who neglects or refuses to keep such fishway in repair and free from obstruction to the passage of fish shall be guilty of a misdemeanor, and subject to the same fine and penalties as shall be recovered in the same manner and for the same purposes as provided in section one of this act.

SEC. 3. Any person who shall willfully or negligently destroy, injure or obstruct any such fishway, or who shall at any time take or catch any salmon, anadromous fish or trout, except by hook and line, within a hundred feet of any fishway required by the state board of fish commissioners to be provided and kept open, or catch any such fish in any manner, within fifty feet of any fishway, shall be guilty of a misdemeanor, and shall be fined the same fine, and when shall be recovered in the same manner and applied to the same purposes as provided in section one of this act. [In effect April 16, 1880. Stats. 18-9, p. 25. Ed. 387.]

An Act relating to fishing in the waters of this state.

SECTION 1. All aliens incapable of becoming citizens of this state are hereby prohibited from fishing for salmon, fish, lobster, shrimps, or shell fish of any kind, or from selling, or giving to another person to sell, any such fish. Any person who shall violate any provision of this act shall be a misdemeanor, and upon conviction by a fine of not less than twenty dollars, or by imprisonment in the county jail for a period not less than thirty days. [In effect April 23, 1880. Stats. 18-9, p. 25. Ed. 387.]

to regulate the sale of certain poisonous substances.

[Approved April 16, 1880.]

§1. It shall be unlawful for any person to retail any substances poisonous, and by reason thereof dangerous to life, without distinctly labeling the bottle, box, vessel, and the wrapper or cover thereof in which the same is contained, with the common or usual name together with the word "poison," and the name and business of the seller. Nor shall it be lawful for any person to retail any of the substances enumerated in either of the schedules to any person, unless, on due inquiry, it is ascertained that the person receiving the same is aware of its poisonous character, and that it is to be used for a legitimate

purpose. It shall be unlawful for any person to retail any of the substances enumerated herein, unless, before delivering the same, such person shall make, or cause to be made, in a book for that purpose only, an entry stating the date of the sale, the name and address of the purchaser, the name and of the substance sold, the purpose for which it is sold, the purchaser to be required, and the name of the seller. The book required by this Act shall be always subject to inspection by the proper authorities. It shall also be unlawful for the person dispensing any of the substances enumerated in either of said schedules to ascertain, by due inquiry, whether the name and address given by the person receiving the same are his true name and address, and for that purpose to require such person to be identified.

Any person who shall dispense any of the substances enumerated in either of said schedules without complying with the regulations herein prescribed, shall, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding five dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; but nothing in this Act shall be so construed as to prevent the dispensing of any substance by a physician authorized to practice under the laws of this State.

This Act shall take effect and be in force from and after the first of January, eighteen hundred and eighty.

SCHEDULE "A."

corrosive sublimate, hydrocyanic acid, cyanide of potassium, essential oil of bitter almonds, opium, strychnia,aconitum, nux vomica, henbane, tansy.

savin, ergot, cotton root, digitalis, chloroform chloral hydrate, and all preparations, compounds, salts, extracts or tinctures of such substances, except preparations of opium containing less than two grains to the fluid ounce.

SCHEDULE "B."

White precipitate, red precipitate, red and green iodine, mercury, cochinum, cantharides, oxalic acid, croton oil, phosphate of zinc, sugar of lead, carbolic acid, sulphuric acid, muriatic acid, nitric acid, phosphorus, and all preparations, compounds, salts, extracts, or tinctures of such substances.

[Approved April 16, 1880. Stats. 1880, p. 102, Ben. L. 1.]

An Act to prohibit the issuance of licenses to aliens not eligible to become electors of the State of California.

[Approved April 12, 1880.]

SECTION 1. No license to transact any business or profession shall be granted or issued by the State, or any county, city, or city and county, or town, or any municipal corporation, to any alien not eligible to become an elector of the State.

SEC. 2. A violation of the provisions of section one of this Act shall be deemed a misdemeanor, and be punished accordingly. [Stats 1880, p. 39, Ben. Ed. 141.]

THE PEOPLE v. QUONG ON LONG.

SEPULVEDA J.:

* * * * It results that the Act in question is a prohibition directed against the Chinese, must be void on that ground, and be considered void, because it violates the provisions of the Constitution of the United States, the supreme law of the land. "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." [Art. VI. Sec. 9, Constitution of the United States.]

The defendant must pay a license, as prescribed in section 3381 of the Political Code; and he cannot avoid this by the Act of the State Legislature for the reasons above stated. [6 Pac. O. L. J., p. 118.]

to define, regulate and govern the state prisons of California.

Section 1. The prison heretofore known as the "branch prison" shall be known hereafter and designated as the "prison at Folsom," and all its finances and other accounts shall be kept separate from those of the state prison at Folsom, and it shall have an official staff conformable to the laws of the state in relation to state prisons; and it shall be lawful for courts to sentence convicts to the state prison at Folsom, or to the state prison at Folsom, in their discretion; and the board of directors shall have power to transfer convicts from either prison to the other one, when, in their opinion, such transfer is for the best interests of the state.

Section 2. For the government and management of the California state prisons there shall be appointed by the governor, with the advice and consent of the senate, on or before the second Monday in January A. D. eighteen hundred and eighty-two, three directors, who shall hold their office for the term of two years from and after said second Monday in January A. D. eighteen hundred and eighty-two, and until their successors are elected and qualified, provided, that said directors so appointed shall at their first meeting after the passage of this act classify themselves by lot, that one of them shall retire in two years, one of them in four years, one of them in six years, one of them in eight years and one of them in ten years after said second Monday in January A. D. eighteen hundred and eighty-two, and an entry of such classification shall be made in the minutes of said directors, signed by them, and a copy thereof shall be filed in the office of the secretary of the state. And on or before the second Monday in January, eighteen hundred and eighty-two, and at the same time biennially thereafter, the governor shall appoint, by and with the advice and consent of the senate, one director, whose term of office shall be for a period of ten years, commencing with said second Monday in January. And each director shall subscribe to the oath of office, which shall be indorsed on his commission.

Section 3. At the first meeting of the directors after the passage of this act and at their meeting in January biennially thereafter, they shall elect one of their number president of the board.

Section 4. A majority of the board shall constitute a quorum for the transaction of business, but no order of the board shall be valid unless it is entered on the journal, and is confirmed by three members.

Section 5. It shall be the duty of the directors

Section 6. To determine the necessary officers of the prisons, and the names of wardens and clerks, specifying their duties, and fixing their salaries; to prescribe rules and reg-

amine all the different departments against the prisons. The directors shall the prisons to be made by one of their members each month.

Second—The directors shall meet at the first ten days in January, April, July, year, and, in addition to the duties above examine the books and accounts of the

Third—To enter on their journal the transactions and of all other official acts, which the members present.

Fourth—On or before the first day eighteen hundred and eighty, and annually report to the governor the condition of with a detailed statement of their receipts and such suggestions as their interests in

SEC. 6. The board of directors shall establish an office in San Francisco, and employ

SEC. 7. The directors shall appoint a warden of the prison, who shall take and subscribe and faithfully to discharge the duties of his office, a bond to the state of California in the sum of ten thousand dollars, with two or more sureties by the directors and the attorney-general, conditioned for the faithful performance of the duties to devolve upon him as such officer, and he shall hold office for four years.

SEC. 8. The wardens shall reside in the prison, and shall be responsible for the discipline and management of the prisoners, and shall

Fifth—To report as often as they may be required to the directors, the number of guards employed, their names and duties, and such other matters as may be required.

Sixth—To have general charge of all departments of the prisons and of the officers.

Seventh—To bring any and all suits at law or in equity arising in his department that may be necessary to protect the rights of the state in matters connected with the prisons and their management, in the name of the board of state prison directors, and to prosecute the same with the consent of the board of directors.

SEC. 9. The board of directors shall appoint a clerk for each prison, who shall take an oath of office, and enter into a bond to the state, with sureties satisfactory to the board, in the sum of five thousand dollars, that they will faithfully discharge the duties which devolve upon them. The clerks shall hold their office for the period of four years, unless sooner removed by the board for misconduct, incompetency, or neglect of duty.

SEC. 10. The clerks shall keep the accounts of the prisons to which they are severally appointed in such manner as to exhibit clearly all its financial transactions. A register of convicts shall be kept, in which shall be entered the name of each convict, the crime of which he is convicted, the period of his sentence, from what county, by what court sentenced, his age, to what degree educated, at what institution, and under what system; an accurate description of his person, and whether he has been previously confined in a state prison in this or any other state and if so when and how he was discharged. The clerks shall also act as secretaries of the board while in session at the prisons.

SEC. 11. The board of directors are hereby authorized and required to contract for provisions, clothing, medicine, forage, fuel, and all other supplies needed for the support of the prisons for any period of time not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Bids for contracts shall be given to the lowest bidder at a public letting thereof if the price bid is a fair and reasonable one, at least not less than the usual market value and prices. Each bid shall be accompanied by each security as the board may require and conditioned upon the bidder's obligation to contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a penal bond, with good and sufficient sureties, in such sum as the board may direct and to their satisfaction, that he will faithfully perform his contract. Notice of the time, place, and conditions of the letting of each contract shall be given for at least two consecutive weeks in two daily newspapers.

printed and published in the city of San Francisco, and in one newspaper printed and published in the city of Berkeley, and in one newspaper printed and published in the city of San Jose, where the prison is situated. If all the bids received for the letting are deemed unreasonably high, the board may, in its discretion, decline to contract, and may again advertise for proposals, and may so continue to renew the advertisement until satisfactory contracts are made, and in the meantime the board may contract with any one whose offer is just and equitable; but no contract shall be made for a term longer than sixty days, nor in any case extend beyond the expiration of the letting. No bid shall be accepted nor a contract made in pursuance thereof, when such bid is higher than the lowest bid at the same letting for the same class of work or material, and when a contract can be had at such lower price. If two or more bids for the same article or article of work for the same amount, the board may select the one which, in its judgment, may by them be thought best for the state, or they may divide the contract between the two, or in their judgment may seem proper and right. [March 14, 1881.]

SEC. 12. The board of directors shall have power, in its discretion, to purchase any clay lands suitable for the construction of a prison that may be contiguous to the San Quentin prison, the value of which shall not exceed in value the sum of fifteen thousand dollars.

SEC. 13. No person shall be appointed to any office or position employed in the prisons on behalf of the state, who is a contractor, or the agent or employee of a contractor, or who is interested directly or indirectly in any business or enterprise therein; and no male person who is not a qualified elector of the state of California shall be appointed by the board to any office in or about the prisons, nor shall any person employed or appointed by virtue of this act who is in the habit of intemperate use of intoxicating liquors, or who is in the habit of intoxication shall justify discharge or removal.

SEC. 14. The governor shall have the power to remove either of the directors for misconduct, incompetency, neglect of duty, upon proper notice to him or them according to the provisions of this act, by copies of written charges, he or they having an opportunity to be heard thereon.

SEC. 15. If the office of director shall become vacant by death, resignation, removal by the governor, or by any other cause, the vacancy shall be filled for the unexpired term by the governor, by and with the advice and consent of the board of directors.

SEC. 16. The warden and clerks may be removed by the board of directors at any time for misconduct, incompetency, neglect of duty, and all other officers and employees may be removed at any time at the pleasure of the warden.

17. The directors shall receive no compensation other than cents per mile for traveling expenses, and one hundred dollars (\$100) per month for other expenses incurred engaged in the performance of official duties. The shall receive a salary not less than two thousand and hundred dollars (\$2400), and not to exceed three thousand (\$3000) per annum in the discretion of the directors. He shall receive one thousand and five hundred dollars per annum; and all other officers and employees shall receive compensation as the board of directors shall deem equitable in each case. [In effect March 14 1881.]

18. All moneys received or collected by the wardens, under this act, shall be paid by them into the state treasury to the credit of a fund to be known as the state prison fund, at least as often as once per month, excepting so much as may be necessary to pay the current expenses. The wardens shall require vouchers for all moneys by them paid, and safely keep the same on file in their respective prisons for all sums of money required to be used for the uses above named, as well as for said fund. When there is not sufficient money in the hands of the wardens, drafts shall be drawn on the controller of state, by at least three of the state prison directors, and signed by the wardens, and the controller of state shall issue his warrant on the state treasurer, who shall pay out of any moneys belonging to the state prison fund appropriated for the use or support of the state prison. [In effect March 14, 1881.]

19. All revenues of the prisons, unless herein otherwise provided, shall be paid to the wardens, who alone are authorized to receipt for the same and discharge from liability. Any sum of money is paid to the wardens, they shall be required to be properly entered on the books by the clerks.

20. On payment of any moneys into the state treasury, provided in this act, the wardens and state treasurer shall report to the controller of state the amount so paid, and the treasurer shall give the wardens a receipt therefor, which shall be filed with the controller. The wardens shall report to the controller of state the amount of money paid into said treasury by them during each month, and shall report to said controller of state the amounts received during by them every three months, and during the term for which such report shall be made, which quarterly report shall be signed by the warden and at least three of the directors. [In effect March 14 1881.]

21. All contracts not employed on contracts may be made by authority of the board of directors, under charge of the wardens and such skilled foremen as he may deem nec-

cessary in the performance of work for the state, or in the manufacture of any article or articles which in the opinion of the board, may inure to the best interest of the state. The board of directors are hereby authorized to purchase from time to time, such tools, machinery, and materials as may be necessary to carry out the provisions of this act, and to dispose of the articles manufactured and not needed by the prison for cash, at public auction or otherwise. If it is deemed proper, having first given notice of such sale by advertising in the city and place thereof, together with a list of the articles to be sold, in ten consecutive issues of two or more daily newspapers of general circulation published in the city and county of San Francisco. The money received from the sale of such articles so sold shall be paid into the state treasury, by the warden of the prison, to the credit of the fund of said prison.

Sec. 22. In the treatment of the prisoners the following general rules shall be observed: Each convict shall be provided with a bed of straw, or other suitable material, and sufficient covering of blankets, and shall be supplied with garments of coarse, substantial material, of distinctive make, and with sufficient plain and wholesome food, of such variety as may be most conducive to good health.

Second—No punishment shall be inflicted, except by the order and under the direction of the warden.

Third—The warden shall keep a correct account of all money and valuables upon the prisoner when delivered to the prison, and shall pay the amount, or the proceeds thereof, and return the same to the convict when discharged, or to his legal representatives in case of his death; and in case of the death of such convict without being released, if no legal representative shall demand such property within five years he shall be paid into the state prison fund.

Fourth—The rules and regulations prescribing the duties and obligations of the prisoners shall be printed and hung up in each cell and shop.

Fifth—Each convict, when he leaves the prison, shall be supplied with the money taken from him when he entered, and which he has not disposed of, together with any other money which may have been earned by him for his own account, or may have been presented to him from any source. In case the prisoner has not funds sufficient for present expenses, he shall be furnished with five dollars in money, and with clothes costing not more than ten dollars, and a railway ticket to the place where sentenced, if the prisoner is to return there, or to any other place of the same county. He shall be entitled, if he so elect, to immunity from work

hair cut, or from being shaved, for three calendar months immediately prior to his discharge. It shall not be lawful for the officers of the prison to furnish, or permit to be furnished, to any one, for publication the name of any prisoner about to be discharged. When the warden and such other officers as may be designated by the directors to act with him in such cases shall be of opinion that any convict is insane they shall make proper examination, and if they regard of the opinion that such person is insane, the warden shall certify the fact to the superintendent of one of the state asylums for the insane, and shall forthwith send such convict to said asylum for care and treatment. It shall be the duty of the warden also to send to the directors a copy of such certificate and thereafter a statement as to his subsequent acts regarding the said insane convict. And it shall be the duty of the superintendent of the insane asylum to receive such insane convict and keep him until cured. It shall be his duty, upon the receipt of such insane convict, to notify the directors of the fact, giving name, date, and where from, and from whose hands received. When, in the opinion of the superintendent, such insane convict is cured of insanity, it shall be his duty to immediately notify the directors thereof; and it shall be his duty, also, to notify the warden of the prison from whence he was received, who shall immediately send for, take and receive the said convict back into the prison the time passed at the asylum counting as part of such convict's sentence. Before discharging any convict who may be insane at the time of the expiration of his sentence the warden shall first give notice in writing to a judge of the superior court of the county in which the state prison may be located, over which he has control of the fact of such insanity; whereupon said Court shall forthwith make an order and deliver the same to the sheriff of said county, commanding him to receive such insane convict and take him to said court. Upon the receipt of such order it shall be the duty of said sheriff to whom it is directed to execute and return the same forthwith to the court by which it was issued, and thereupon the said court shall cause proper examination to be made by medical experts and if it shall satisfactorily appear that such convict is insane said court shall order him to be confined in one of the insane asylums. The sheriff shall receive the same compensation as for transferring a prisoner to the state prison, and to be paid in the same manner. If any judge after having been so notified by the warden shall neglect to cause such order to be made as herein provided, or any such sheriff shall neglect to remove an insane convict as required by the provisions of this section, it shall be the duty of the warden to cause such insane convict to be removed before a superior court of a county in which the state prison

is located, in charge of an officer of the prison, or other able person, for the purpose of examination; and for such removal shall be paid out of the state treasury in the same manner as when removed by the sheriff as heretofore.

Sec. 23. The board of state prison directors shall require of every able-bodied convict confined in the prison as many hours of faithful labor, in each and every year during his term of imprisonment as shall be prescribed by the rules and regulations of the prison, and by faithfully performing such labor, and being obedient to the rules and regulations of the prison, and being able to work, yet faithful and obedient, shall be allowed, at the expiration of his term, instead and in lieu of the credits heretofore provided by law, a deduction of two months in each of the first two years, four months in each of the next two years, and six months in each of the remaining years of said term; and that any such convict who shall commit an assault upon a keeper, or any foreman, officer or convict, or who shall endanger life, or by any flagrant disregard of the rules of the prison or any misdemeanor whatever, shall forfeit all the credits of time earned by him for good conduct, and the commission of such offense; such forfeiture however shall be made by the board of directors, after due proof of the offense, and notice to the offender; nor shall such forfeiture be imposed when a party has violated any rule or regulation of the prison involving violence or evil intent, of which the directors shall be the judges. The names of no convict who attempts to escape after the passage of this act, shall be sent by the state board of directors to the governor for the credits herein provided.

Sec. 23. All criminals sentenced to the state prison by the authority of the United States shall be received at the prison according to the sentence of the court by which they were convicted, and the prisoners so confined shall be subject, in all respects, to the same discipline and treatment as though confined under the laws of this state. The wardens are hereby authorized to charge and receive from the United States for each prisoner, the cost of all clothing that may be furnished, and one dollar per month for the use of the prisoner. No other charge shall be made by any officer for or on account of such prisoners.

Sec. 25. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company or association by the state board of prison directors, nor shall be let out any such labor prior to January first, eighteen hundred and eighty-two, by contract extending beyond said date; provided, that after the passage of this act, no convict shall be

be let or contracted out at a price less than one dollar per each convict; *provided further* that this section shall apply to contracts heretofore entered into.

36. The board of directors shall have power to control the supply of gas and water for said prisons, upon terms as said board shall deem to be for the best interest of the state or to manufacture gas or furnish water themselves at their option.

37. No officer or employee shall receive, directly or indirectly, any compensation for his services other than that provided by the directors; nor shall he receive any compensation, whatever, directly or indirectly, for any act or service he may do or perform for or on behalf of any contractor, or employee of a contractor. For any violation of the provisions of this section, the officer, agent, or employee of the state shall be discharged from his office or service, and the contractor, or employee, or agent of a contractor engaged therein shall be expelled from the prison grounds, and shall not be permitted within the same as a contractor, agent, or employee.

38. No officer or employee of the state, or contractor or employee of a contractor, shall, without permission of the board of directors, make any gift or present to a convict, or receive any from a convict, or have any barter or dealings with a convict. For every violation of the provisions of this section, the party engaged therein shall incur the same penalty as provided in section twenty-seven.

39. No officer or employee of the prison shall be interested, directly or indirectly, in any contract or purchase authorized to be made by any one for or on behalf of the prison.

40. Repealed. [In effect March 1, 1891.]

41. There shall be printed annually for the use of the prisons, five hundred copies of the annual report of the board of directors, and the clerk shall annually transmit to each state prison in the United States one copy of such report.

42. All the bonds of officers and employees under this act shall be deposited with the secretary of state.

43. If any of the shops or buildings in which convicts employed are destroyed in any way or injured by fire or otherwise, they may be rebuilt or repaired immediately, in the direction of the board of directors, by and with the approval and consent of the governor, attorney general, and clerk of state, and the expenses thereof paid out of any moneys in the state treasury not otherwise appropriated by law.

44. The board of directors must report to the governor from time to time the names of any and all persons engaged in the state prisons who, in their judgment, ought to

1881. Chap. 13. p. 10, 11. Act
of March 14, 1881.]

*An Act to create an additional police
judge's court of San Francisco, to
be in addition.*

Section 1. There is hereby created
for the city and county of San Francisco
a judge's court to be known and designated
judge's court number 2, which court shall
jurisdiction of all preliminary examinations
with felony, and of all misdemeanors
and county ordinances, and all other
police judge's court of said city and
district.

Sec. 2. There shall be, as far as the
distribution of cases between the said courts
be alternately set down for trial to each
which the warrants are issued.

Sec. 3. The mode of examination in
the police judge's court number 2 shall
governed by the same rules prescribed in
courts in similar cases.

Sec. 4. A judge of the police judge's
be elected at the same time and in a like
judge of the police judge's court of
and whose term of office shall be the same
the state of California shall, within the
sage of this act, appoint some

judge's court of said city and county. And said board of supervisors shall elect a clerk of court, at a salary of one thousand eight hundred dollars per annum, payable in the same manner as the salary of the judge, and clerk of the police judge's court of said city and county are now paid.

SEC. 6. The judge of the police judge's court number 2 shall be a conservator of the peace in said city and county and may exercise all the powers conferred by law upon the police judge as magistrate.

SEC. 7. The judge of said court shall appoint a suitable person to act as bailiff of said Court, who shall receive a like compensation for such services as is now paid to the bailiff of the police judge's court for said city and county. [In effect March 7 1881.]

Act to prevent fraud and deception in the manufacture and sale of butter and cheese.

SECTION 1. Whoever manufactures, sells, or offers for sale, or causes the same to be done, any substance purporting to be butter or cheese having the semblance of butter or cheese, which substance is not made wholly from pure cream or milk, unless the same be manufactured under its true and appropriate name, and unless each package, roll, or parcel of such substance, and each vessel, containing one or more packages of such substance has distinctly and durably painted, stamped, or marked thereon in English the true and appropriate name of such substance, in ordinary bold face capital letters, not less than five lines pica, shall be punished as provided in section three of this act.

SEC. 2. Whoever shall sell any such substance as is mentioned in section one of this act, or causes the same to be done without having on each package, roll or parcel so sold a label attached thereto, on which is plainly and legibly printed in English in roman letters, the true and appropriate name of such substance, shall be punished as is provided in section three of this act.

SEC. 3. Whoever shall violate section one or section two of this act shall be guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than five hundred dollars, or imprisoned in the county jail not less than ten nor more than sixty days or by both such fine and imprisonment in the discretion of the court; *provided*, that nothing contained in this act shall be construed to prevent the use of skimmied milk, salt rennet, or harmless coloring matter in the manufacture of butter or cheese.

SEC. 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed. [In effect March 1881.]

An Act to authorize the appointment of an interpreter of Italian language and dialects, in criminal proceedings in cities and counties of one hundred thousand inhabitants.

SECTION 1. In all cities and cities and counties of one hundred thousand inhabitants, where an interpreter of the Italian language is necessary, it shall be the duty of the Mayor and Police Judge of such city, or of the county, and of the Superior Judge of said city and county, or of the county in which said city is situated, or if there are more Judges than one, then it shall be the duty of the presiding Judge of said Superior Court, or Mayor and Police Judge, to appoint an interpreter of the Italian language, who shall be an Italian, and who shall also be able to interpret the Italian dialects into the English language, to be employed in criminal proceedings when necessary, in said cities, or cities and counties.

SEC 2. The said interpreter shall receive a salary of fifteen hundred dollars per annum, which shall be paid out of the General Fund of such city, or city and county.

SEC 3. This Act shall not repeal any Act heretofore made and now in force for the appointment of interpreters, except so much of any Act which may conflict with this Act in the appointment of Italian interpreters, which took effect March 12th, 1885.]

An act to provide for the commitment of persons convicted of crime to the House of Correction.

SECTION 1. Any Court, or judicial officer authorized by law to commit persons to the county jail in any city and county, of this State, wherein there is a House of Correction may commit to said House of Correction, instead of to the county jail, any person convicted of crime, the punishment for which now is imprisonment in the said jail; but no person shall be sentenced to imprisonment therein for a shorter or longer term than that which he might be sentenced in the county jail. [Took effect March 9th, 1885.]

Act to provide for the Police Courts in cities having thirty thousand and under one hundred thousand inhabitants, and to provide for officers thereof

SECTION 1. The judicial power of every city having fifty thousand and under one hundred thousand inhabitants, shall be vested in a Police Court to be held therein by the city Justices, or one of them, to be designated by the Mayor, but either of said city Justices may hold such court without such designation, and it is hereby made the duty of said city Justices, in addition to the duties now required of them by law, to hold said Police Court.

SEC. 2. The Police Court shall have exclusive jurisdiction of the following public offenses committed in the city:

1. Petit larceny.
2. Assault or battery not charged to have been committed upon a public officer in the discharge of official duty or with intent to kill.
3. Breaches of the peace, riots, affrays, committing unlawful injury to property, and all misdemeanors punishable by fine or by imprisonment, or by both such fine and imprisonment.
4. Of proceedings respecting vagrants, lewd, or disorderly persons.

SEC. 3. Said Court shall also have exclusive jurisdiction of all proceedings for violation of any ordinance of said city, both civil and criminal, and of an action for the collection of any license required by any ordinance of said city.

SEC. 4. Neither of said Justices shall sit in cases in which he is a party, or in which he is interested, or where he is related to either party by consanguinity or affinity within the third degree; and in case of the sickness or inability of the city Justices, either of them may call in a Justice of the Peace residing in the county to act in his place and stead.

SEC. 5. Each of the city Justices, while acting as Judge of said Court, shall also have power to hear cases for examination, and may commit and hold the offender to bail for trial in the proper Court, and may try, condemn, or acquit, and carry his judgment into execution as the case may require, according to law, and punish persons guilty of contempt of Court, and shall have power to issue warrants of arrest in case of a criminal prosecution for a violation of a city ordinance, as well as in case of the viola-

tion of the criminal law of the State, also all appeals and all other processes necessary to the full exercise of his powers and jurisdiction, and the cases enumerated in this section in which it is not required by the Constitution of the State to proceed to judgment in the first instance with but on appeal the defendant shall be entitled to jury in the Superior Court.

Sec. 6. The Police Court shall have a Clerk appointed by the City Council upon the recommendation of the Mayor who shall hold office during the term of the Council. He shall receive an annual salary of one hundred dollars, payable monthly out of the treasury of the city, which salary shall be full compensation for the services rendered by him. The Clerk shall keep the proceedings of and issue all processes, subpoenas, city Justices, or other of them, or by said Court, and receive and pay weekly into the city treasury the fines imposed by said Court. He shall also, at the request of the City Council, administer the oath of office to the City Justices, and take the oath of all fines imposed and collected and of fines imposed and uncollected since his last report. He shall prepare bonds, justify bail, when the amount is fixed by either of the city Justices, or said Court, not exceeding one hundred dollars, and may swear and certify oaths. The Clerk shall remain in the room of said Court during business hours, and during reasonable times thereafter as may be necessary in discharging his duty. Before receiving his salary any month he shall make and file with the City Council an affidavit that he has deposited with the City all moneys that have come to his hands belonging to the city. Any violation of this provision shall be a misdemeanor. He shall give a bond in the sum of one thousand dollars, with at least two sureties to be approved by the Mayor conditioned for the faithful discharge of his duties.

Sec. 7. All fines and other moneys collected at the City in the Police Court shall be paid into the treasury on the first Tuesday of each month, and for fees and costs due the officers of said Court reported to the City Council each month.

Sec. 8. Rooms and Dockets. The City Council shall furnish a suitable room for the holding of said Court. The City Council shall also furnish the necessary dockets. One docket shall be styled "The City Criminal Docket" in which all the criminal business shall be entered. Each case shall be alphabetically indexed.

shall be styled, "The City Civil Docket," and it contain each and every civil case in which the city is interested, or which is prosecuted or defended for her interest, and each case shall be properly indexed.

9. The Police Court shall be always open, except on non-judicial days, and then for such purposes only as law permitted or required of other Courts of this State.

10. Appeals may be taken from any judgment of Police Court to the Superior Court of the county in which such city may be located, in the same manner in which appeals are taken from Justices Courts in like cases.

11. In all cases of imprisonment of persons confined in said Police Court of any offense committed in violation of the laws of this State, or by ordinance of the city, the persons so to be imprisoned, or by ordinance ordered to labor, shall be imprisoned in the city jail, or, if ordered to labor, shall labor in the city.

12. Said Courts shall have a seal, to be furnished by the City Council.

13. City Cases. The city Justices shall, on the first day of each month, make to the City Council a full and complete report of all the cases, civil and criminal, in which the city has an interest, or which are required to be entered in the City Civil Docket, or the City Criminal Docket; such report to be made upon blanks furnished by the City Council, and in such form as they may require.

14. Certified transcripts of the dockets, made by the clerk of the said Court, under the seal of said Court, shall be evidence in any Court of this State of the contents of said dockets, and all warrants and other process issued out of said Court, and all acts done by said Court certified under its seal, shall have the same force and effect in any part of this State as though issued or done by the Court of record of this State.

15. This Act to go into effect upon the expiration of the term of office of the present Police Judge of said city, or when a vacancy occurs therein. [Approved 1885.]

and knowingly shoot, wound, or
manner catch or capture any blue
California, or shall knowingly take
nest of any white or blue crane, or
destroy any blue crane's eggs, in the
said State, shall be deemed guilty of
upon conviction thereof before any
of the township in which the offense
mitted, shall be fined in a sum not
nor exceeding one hundred dollars
for each offense, or may be imprisoned
days nor more than one hundred days
imprisonment as the judgment of

SEC. 2. Of all moneys collected under
this Act one-half shall be paid to the
owners, and one-half shall be paid into
for the benefit of the Common School

SEC. 3. This Act shall take effect
and after its passage. [Approved]

*An Act entitled an Act to prevent the
using or wounding the birds*

Sec. 3. This Act shall take effect and be in force from and after the date of its passage. [Approved March 10, 1875.]

An Act to protect life and property against the careless and dangerous use or handling of dynamite and other explosives

Section 1. It is the duty of each and every person, contractor, firm, association, joint stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or buying, or giving out nitro-glycerine, dynamite, vigorite, guncotton powder, giant powder, or other high explosive, whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as they are made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance.

Sec. 2. Such journal, or record book, must show, in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient to abide for identification.

Sec. 3. Such journal or record book must be kept by the person, firm, association, joint stock company, or corporation so selling, delivering, or otherwise disposing of the explosive substance, or substances, in his or their principal office or place of business, at all times subject to the inspection and examination of the peace officers or police authorities of the State, county, city and town, or municipality where the same is situated, on

ties on demand, shall be punished accordingly.

Sec. 4 In addition to such punitive penalty, such person, firm, company, or corporation so offending, on each offense, the sum of two hundred dollars shall be recovered in any Court of competent jurisdiction in action at law. The party so injured shall not be entitled to dismiss the same until the Court before which the suit has been brought has rendered any judgment recovered be paid into Court, and all moneys so recovered shall be paid to the party bringing the suit.

Sec. 5 Any person who in any highway of any county, city and village, or at, in, or near to any private school, or college, church building, or at, in, or near to any public building, or on board of, or near any railway, or train, or cable road, or car or other vessel, engaged in the transportation of passengers, shall

Act, shall be presumed (*prima facie*) to be guilty of reckless and malicious possession thereof, within the meaning of the foregoing section, if any such substance is found upon him, or in his possession, in any of the cases or under any of the circumstances specified in the foregoing section.

7. No person may knowingly keep or have in his possession any dynamite, vigorite, nitro-glycerine, powder, hercules powder, or other high explosive, in the regular course of business carried on by such person either as a manufacturer thereof, or merchant in the same, or for use in legitimate blasting operations, or in the arts, or while engaged in transporting the same for others, or as the agent or employé of others in the course of such business or operations. The possession of any such explosive substances as named in this Act is unlawful; and the person so unlawfully possessing it shall be punished by imprisonment in the State Prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

8. Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, or boat, railroad, tramroad, or cable, or any train, or car, or any depot, stable, car-house, school-house, church, dwelling-house, or other place where human beings usually inhabit, assemble, meet, or pass and repass, any dynamite, nitro-glycerite, giant or hercules powder, gunpowder, or other chemical compound, or other explosive, with the intent to injure or destroy such building, vessel, boat, or structure, or with the intent to injure, intimidate, or kill any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the State Prison not less than one year.

to establish a Police Court in and for the City of Marysville.

ARTICLE 1. A Police Court is hereby established within the City of Marysville, in said State of California, shall be presided over by the Police Judge. The Court shall have exclusive jurisdiction of all violations of city ordinance, and may grant bail, try, fine, or to prison any offender in accordance with the provisions of such ordinances, and pass judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied in the proportion of one imprisonment for every dollar of the fine. Said Court shall also have jurisdiction of all misdemeanors committed in the City of Marysville, punishable by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment, and shall also have jurisdiction of the crime of drunkenness committed within the City of Marysville. The Police Judge shall have and exercise all the jurisdiction and powers of a Justice of the Peace, as to offenses committed within the City of Marysville, may administer all oaths known to law. Whenever sentence of imprisonment is passed upon any offender, the Police Judge may include in such judgment that such offender shall be subject to labor under the custody of the Marshal of the city. The Clerk of the Police Court shall keep a record of the proceedings in the Police Court, receive, and pay weekly to the City Treasurer all the moneys collected by him, and render to the Treasurer monthly a detailed account, under which all fines imposed and the moneys collected since the last account. The Clerk of the Police Court shall not receive or receive for his own use any fee or perquisite for the discharge of the duties of his office, but all moneys collected by him shall be paid into the City Treasury. The Police Judge shall receive for the services herein provided a annual salary of five hundred dollars, and give

passage. [Approved March 18,

*An Act to create a Police Court in
County of San Francisco, Sta*

SECTION 1. There is hereby created
and for the City and County of
California, a Court, to be known as
the City and County of San Francisco
consist of three Judges, who shall
be elected at the general elections held according to law
and shall hold office for the term of two years
of whom may hold Court. The Court shall be divided
into departments known as Department
Number One, Department Number Two, Depart-
ment Number Three. There may be as many sessions of the Court
as there are Judges thereof, and at any time,
as there are Judges thereof, choose from their number a president,
who shall be removed at their pleasure. He shall
be removed at their pleasure. He shall
to their respective departments.
either of the Judges not removed.

second -Of all misdemeanors punishable by fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

third.—Of all examinations of felonies committed in the City and County of San Francisco.

fourth -Said Court, or any Judge thereof, shall have the same powers in all criminal actions, cases, examinations, and proceedings as are now or hereafter conferred by law upon Justices of the Peace.

sec. 3. Proceedings in said Court shall be conducted in conformity with the laws of this State regulating proceedings in Justices' and Police Courts, and appeals to the Superior Courts.

sec. 4 No person except a licensed attorney of the Superior Court of this State shall practice law in said Court; *provided, however*, that a person accused of crime shall have the right to defend himself.

sec. 5 There shall be appointed for each of the departments of this Court, in the manner now provided by law, an attorney, whose duty it shall be to attend to the prosecution of all cases coming before the department for which he shall have been appointed, and who shall receive a salary of two hundred and fifty dollars per month; he shall also be appointed by each of the prosecuting attorneys aforesaid a clerk, who shall receive a salary of one hundred and twenty-five dollars per month, whose duty it shall be to be in attendance in the office of the prosecuting Attorney from nine o'clock A. M. to twelve o'clock M., and from two o'clock P. M. to four o'clock P. M. (Sundays and legal holidays excepted), for the transaction of the business of the office.

sec. 6. There shall be appointed a Clerk for each department of this Court, in the manner now provided by law, who shall receive a salary of two hundred dollars per month, who shall transact the business of Clerk of said Court as provided by law.

sec. 7. There shall be appointed by the Judge of each

Sec. 8. The Clerk of the Police Court shall receive for his services the pay now as

Sec. 9. The Chief of Police shall employ police officers to attend constantly said Court, to execute the orders of the Court.

Sec. 10. All fines and forfeitures of the Court shall be paid into the treasury of the county by the Clerk of each department of the Court, at the time of making his return to the City and County Auditor, and his return to the City and County Treasurer, with a statement of all fines and forfeitures received during the preceding week.

Sec. 11. Nothing in this Act shall affect the two Judges at present in office in the City and County of San Francisco, and they shall, immediately after the passage of this Act, continue to hold office as Judges of the Police Court of the City and County of San Francisco, and hold office for the term for which they have been elected. Within the

SEC. 12. All salaries mentioned in this Act shall be paid in the same manner that the salaries of the other city and county officers are paid.

SEC. 13. All Acts and parts of Acts that are in conflict with the provisions of this Act are hereby repealed.

SEC. 14. This Act shall take effect from and after its passage. [Approved March 5, 1889.]



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- Undue influence of an elector prohibited. Every person who, by force, threats, menaces, bribery, or any other means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same; or attempts by any means whatsoever to awe, restrain, hinder, or disturb any elector in the exercise of the right of suffrage, or furnishes any

such elector to vote for a different person than he intended or desired to vote for. Any person who, as a spectator, judge, or clerk of any election, induces or attempts to induce any elector by menace or reward, or promise thereof, to vote for a different person than what such elector intended to vote for, is guilty of felony. [*Amendment approved March 1893, Stats. 1893, p. 7.*]

64. No prosecution against witness cases. No person, otherwise competent to testify, shall be disqualified or excused from testifying in any of the offenses enumerated in this title, on the ground that such testifier has committed such offense against himself; but no prosecution can afterwards be brought against such witness for any such offense committed by him, unless he is first convicted for the prosecution. [*New section added March 1891; Stats. 1891, p. 185.*]

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78 Cal. 169.

§ 123. Advertising in divorce matters prohibited. Who-
advertises, prints, publishes, distributes, or circu-
or causes to be advertised, printed, published,
uted, or circulated, any circular, pamphlet, card,
ill, advertisement, printed paper, book, newspaper,
of any kind, offering to procure or obtain, or to
procuring or obtaining, any divorce, or the sever-
dissolution, or nullity of any marriage, or offering
age or appear or act as attorney, counsel, or referee
suit for alimony or divorce, or the severance, dis-
on, or nullity of any marriage, either in this state
ewhere, shall be guilty of a misdemeanor. This act
not apply to the printing or publishing of any notice
ortisement required or authorized by any law of
ate. [*Amendment approved February 27, 1893, Stats.*
p. 48, in effect immediately.]

This section was first introduced at the session of 1891 (Stats.
279) As then introduced it read as follows --

Whoever advertises, prints, publishes, or circulates, or
to be advertised, printed, published, distributed, or cir-
ed, any circular, pamphlet, card, handbill, advertisement,
paper, book, newspaper, or notice of any kind offering
sue, or to aid in procuring, any divorce, either in this
or elsewhere, shall be guilty of a misdemeanor. This act
not apply to the printing or publishing of any notice or
tisement required or authorized by any law of this state.

§ 124. This section applies only to quasi public corpora-
93 Cal. 630.

"Trustee" of corporation includes director in irriga-
District 93 Cal. 630.

Retracted for offering bribe to director of irrigation dis-
93 Cal. 630.

§ 125. Superior court has no jurisdiction of the mis-
deanor of conspiracy punishable by this section: 84 Cal.

Conspiracy to rob, what is: 67 Cal. 412.

Conspirator may be separately prosecuted: 67
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187. Jurisdiction of superior
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Premeditation — Deliberation.
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Murder where a number conspire
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Acceleration of death: 65 Cal. 5

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Accessory after the fact: 65 Cal.

Trial for murder while under
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Reasonable doubt: 76 Cal. 573; 80 Cal. 34; 78 Cal. 317; 86 Cal. 268.

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Degrees of murder: 67 Cal. 378; 67 Cal. 427; 67 Cal. 1; 75 Cal. 306; 81 Cal. 566; 86 Cal. 144; 86 Cal. 329; 88 Cal. 379; 94 Cal. 379.

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Mayhem, what constitutes: 93 Cal. 564; evidence: 93

Kidnaping by officer: 89 Cal. 144; taking arrested person to house of ill fame. 89 Cal. 144; taking kidnaped person out of state. 85 Cal. 309.

Indictment for kidnaping: 89 Cal. 144.

Indictment for robbery: 66 Cal. 103; 75 Cal. 98; 80 Cal. 654.

Evidence: 65 Cal. 135; 84 Cal. 449; 90 Cal. 377; 94 Cal. 509; 80

Instructions: 65 Cal. 107; 65 Cal. 136; 80 Cal. 205; 90 Cal. 41; 93 Cal. 483.

Arrest: 88 Cal. 483.

Conspiracy to rob: 67 Cal. 412; 77 Cal. 7; 77 Cal. 113.

Former conviction for assault does not bar prosecution for attempt to rob, committed at the same time: 77 Cal. 7.

Punishment of robbery: 66 Cal. 290; 72 Cal. 59.

Assault to commit murder, what constitutes: 65 Cal. 564; 80 Cal. 41; 90 Cal. 606; attempt. 95 Cal. 636.

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Presumption as to intent. 80 Cal. 41.

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Verdict—Conviction for
Cal. 407; 65 Cal. 445; 76 Cal. 521; 76 Cal.
345; 88 Cal. 422; 93 Cal. 516.

218. Train-wrecking to be punished by imprisonment for life. Every person who shall throw out a switch, remove a rail, or place any obstruction on any railroad in the state with the intention of derailing any passenger train, or who shall unlawfully board a passenger train with the intention of robbing the same, or who shall unlawfully place any dynamite or other explosive or any other obstruction, on the tracks of any railroad in the state of California, with the intention of derailing any passenger, freight, or mail train, or shall unlawfully set fire to any railroad, or shall unlawfully pass, with the intent of wrecking a train, any person or vehicle, shall be adjudged guilty of a felony, and shall be punished with death or imprisonment for life, at the option of the jury. [Section added March 31, 1891; *Stats.* immediately.]

220. Assault to commit rape. Evidence: 93 Cal. 580; 85 Cal. 174; 80 Cal. 306; 85 Cal. 174.

248. Newspaper article containing several libels institutes but one offense: 79 Cal. 428.

Indictment: 73 Cal. 120.

Place of trial: 73 Cal. 120.

Person referred to in publication: 71 Cal. 194.

Instruction as to ignoring law: 71 Cal. 194.

261. Consummation of offense, how may be shown: 66 Cal. 597.

Consent — Where assault committed on child: 70 Cal. 467.

Information: 70 Cal. 473; 75 Cal. 323.

Evidence: 66 Cal. 597, 67 Cal. 54, 75 Cal. 323; 79 Cal. 625; 90 Cal. 212, 90 Cal. 381.

266. Adultery: 71 Cal. 263.

Seduction under promise of marriage: 93 Cal. 74.

267. Abduction Taking need not be forcible: 71 Cal. 11, evidence of purpose of prostitution is not necessary: 88 Cal. 316, ignorance of age of child is no defense: 96 Cal. 315, 88 Cal. 136, evidence of child's habits: 96 Cal. 315.

Previous unchastity: 71 Cal. 611.

Legal custody of child, proof of: 88 Cal. 316.

Consent — Of father: 88 Cal. 136; of child: 96 Cal. 315.

Indictment: 88 Cal. 136.

In act to prevent compulsory prostitution of women, and the importation of Chinese or Japanese women for immoral purposes, and to provide penalties therefor.

[Approved March 23, 1893; Stats. 1893, p. 217.]

SECTION 1. Every person who, within this state, takes by inducement any female, against her will and without her consent, for the purpose of prostitution, is punishable by imprisonment in the state's prison not exceeding five years and a fine not exceeding one thousand dollars.

SEC. 2. Every person who takes any woman unlawfully, and against her will, and by force, menace, or duress compels her to live with him in an illicit relation, against her consent or to live with any other person, is punishable by imprisonment in the state's prison not less than two nor more than four years.

SEC. 3. Every person bringing to or landing within this state any woman born in the empire of China or Japan, or the islands adjacent to the empire of China, with intent to place her in charge or custody of any other person, and against her will to compel her to reside with him, or for the purpose of selling her to any person whatsoever, is punishable by a fine not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months.

SEC. 4. Any person who shall sell or receive any money or other valuable thing for or on account of his placing in com-

less than \$100 nor more than \$500, and by imprisonment in the penitentiary for not less than one year nor more than five years.

SEC. 6. Every person who shall knowingly receive or dispose of any money or other valuable thing stolen from any person, or placing in custody for immoral purposes, without her consent, is punishable by imprisonment in the state's prison not exceeding five years and by fine not exceeding one thousand dollars.

301. An act to provide for a day of rest for all persons.
[Approved February 27, 1892.]

SECTION 1. Every person employed in any business, trade, or labor shall be entitled to one day of rest in every week, and it shall be unlawful for any employer to require any of his employees, or any of them, to work more than seven days in any week; provided, however, that this act shall not apply to any case of emergency.

SEC. 2. For the purposes of this act, the week shall mean and apply to all cases, whether the work is done by the day, week, month, or year, and shall be deemed to be done in the day or night.

SEC. 3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor.

SEC. 4. This act shall take effect from and after its passage.

307. Ordinance prohibiting the sale of tobacco to minors.
142.

308. Selling tobacco to minors.
or gives, or furnishes in any way, tobacco to any minor under the age of sixteen years.

109 *An act to prevent the placing or keeping or leaving of married women in houses of prostitution, and to punish persons therefor.*

[Approved March 31, 1891, Stats. 1891, p. 285.]

SECTION 1. Any man who by force, fraud, intimidation, threats, persuasions, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at, consents to, or permits the placing or leaving of his wife in a house of prostitution, or allows or permits his wife to remain herein, shall be guilty of a felony, and upon conviction hereof shall be imprisoned in the state prison for not less than three years nor more than ten years.

SEC. 2. In all prosecutions under this act, the wife shall be a competent witness against the husband.

SEC. 3. This act shall take effect immediately.

319. Lottery ticket. what is not 70 Cal. 632.

320. Ordinance punishing offense of having possession of lottery tickets, validity 91 Cal. 440.

325. Owner not entitled to return of tickets 68 Cal. 281.

330. Gaming a misdemeanor. Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenot, rouge et noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of said prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars nor not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [*Amendment approved March 10, 1891; Stats. 1891, p. 57.*]

Gaming at tan 70 Cal. 515; 84 Cal. 165; 85 Cal. 580.

Chinese pool: 92 Cal. 277.

Faro: 93 Cal. 641

Bunko. 85 Cal. 378.

Banking game, definition of 80 Cal. 133.

Visiting gambling house 76 Cal. 587

Indictment for gambling 93 Cal. 641; 80 Cal. 153.

840. Act limiting rate of interest is valid: 67 Cal. 359.

874. *Crimes against public*

person who puts the carcass or offal from any slaughter pen, or any river, creek, pond, reserve, public highway, or road in contact to destroy the same by fire within any city, town, or village, except the construction and operation of the board of health in such city; every person who puts any waste carcass of any dead animal, or upon the borders of any stream from which water is drawn for the use of any city, city and county, or state, so that the drainage from such carcass, or offal may be taken into any pond, lake, or reservoir; or into any privy, or carcass of any dead animal of any kind to remain in or upon the borders of any pond, lake, or reservoir within any city, town, or village, or owned or occupied by him, so that the drainage from such water-closet, privy, carcass, or offal may be taken into any stream, pond, lake, or reservoir; or any horses, mules, cattle, or any kind of animal.

to act to regulate the sale of imitation olive oil, and to repeal an act entitled "An act to regulate the sale of olive oil," passed March 16, 1887.

[Approved March 23, 1893, Stats. 1893, p. 210.]

ART. 1. Section one of said act is hereby amended to read as follows:

§ 1. That for the purpose of this act every article, substance or compound, or oil other than that extracted solely from the fruit of the olive tree, and in the semblance of olive oil, and obtained from the fruit of the olive tree, is hereby declared to be imitation olive oil.

2. Each person who manufactures imitation olive oil, shall upon every bottle, can, or other vessel containing imitation olive oil, label with the words "imitation olive oil" thereon in capital letters, in a clear and legible manner, the English language, in plain type, designated and set in twenty-four point letter type (two-line pica), on a face, said labels shall also state plainly the name and address of the manufacturer or importer, the name and hereunto affixed and put up, and also the names and percentages of the different ingredients contained in the oil, can or vessel.

3. No person, by himself or another, shall knowingly consign, or forward by any common carrier, whether by private or public conveyance, unless the same be as provided in section two of this act, and no carrier knowingly receive, for the purpose of forwarding or transmitting, any imitation olive oil, unless it shall be marked as before provided, consigned, and by the carrier receipted "imitation olive oil," provided, that this act shall not apply to any goods in transit between foreign countries and the state of California.

4. No person shall knowingly have in his possession or in his control any imitation olive oil, unless the bottle, vessel or other package containing the same, be clearly labeled as provided in section two of this act.

5. No person, by himself or another shall knowingly offer for sale imitation olive oil under the name of or the pretense that the same is pure olive oil, and no person by himself or another, shall knowingly sell any imitation olive oil unless he shall inform the purchaser at the time of sale that the same is imitation olive oil, and shall deliver to the purchaser at the time of sale a statement, clearly written in the English language, which shall refer to the oil sold, and which shall contain, in plain type, designated and set in twenty-four point letter type (two-line pica), on a face, in capital letters, the words "imitation olive oil" shall give the name and place of business of the manufacturer or compounder.

6. Every person having possession or control of any oil or olive oil, which is not marked as required by the provisions of this act, shall be presumed to have known, done

sign, or mark intended to deceive,
manufactured in this state.

SEC. 8. Whoever shall violate any
provisions of this act shall be deemed guilty,
and, upon conviction thereof, be punished
by a fine of not more than one hundred dollars nor more
or be imprisoned in the county jail
nor more than six months, or by both
as the court may direct.

SEC. 9. It shall be the duty of the
and the state analyst to enforce the

SEC. 10. An act entitled "An act to
oil," approved March tenth, eighteen
is hereby repealed.

The act repealed by this statute is:

An act to regulate the sale

[Approved March 10, 1891; 2]

SECTION 1. Every manufacturer of
place upon every bottle or can filled
posed or offered for sale as such, a
name and address of the manufacturer
of manufacture, and shall file with the
ture a copy of said label, accompanied
pure, and that this act has been complied
SEC. 2. Whoever adulterates olive oil
oil not olive oil, and exposed or offered
within the state of California, is guilty
upon conviction thereof before any ju
township of legal jurisdiction, shall be
than fifty dollars, nor exceeding one
of the action, for each offense.

An act to prevent destruction by fire of property of contiguous owners

[Approved March 11, 1891, Stats. 1891, p. 473.]

SECTION 1. Every person who starts a fire in hay, grain, stubble, or grass, without first carefully providing by plowing or otherwise, for the keeping of said fire within and upon the premises upon which it is started or set out, and by reason of the non-providing of such barrier any property of an adjoining or contiguous resident or owner is injured, damaged, or destroyed, is guilty of a misdemeanor.

SEC. 2. This act shall take effect and be in force from and after its passage.

387. *Cases where selling liquor is a crime.* Every person who sells or furnishes, or causes to be sold or furnished, any intoxicating liquors to any habitual or common drunkard, is guilty of a misdemeanor; or who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any Indian, is guilty of a felony. [Amendment approved March 9, 1893; Stats. 1893, p. 98 in effect immediately.]

An act to prevent the sale of intoxicating liquors to minor children.

[Approved March 11, 1891, Stats. 1891, p. 91.]

SECTION 1. Every person who sells or gives, or causes to be delivered, to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatever, or who as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years to visit said saloon or public house where intoxicating liquors are sold, for the purpose of gambling, playing cards, billiards, pool or any game of chance, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than three hundred dollars, and in default of payment of said fine shall be imprisoned in the county jail for a period of not less than one nor more than thirty days.

SEC. 2. An act in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect immediately upon its passage.

400. See post, sec. 402 note.

401. See post, sec. 402¹/₄ note.

An act to prevent the spread of contagious or infectious diseases among domestic animals

[Approved March 23, 1893, Stats. 1893, p. 302.]

SECTION 1. Any person or persons, company or corporation, owning or having possession or control of any animal affected by any contagious or infectious disease, who shall fail to keep the same within an inclosure, or herd the same in some place

for each offense.

SEC. 2. This act shall take effect

402. *Contagious diseases of animals.* Any person who shall knowingly sell, or offer for sale, or who shall cause or procure to be sold, or used, or expose any horse, mule, or other animal, having the disease known as glanders, or bring, or cause to be brought, or cause to be sold, or expose any sheep, hog, horse, or other animal, knowing the same to be affected with any contagious or infectious disease, shall be guilty of a misdemeanor. [Amendment approved March 10, 1891, p. 25]

This section was originally numbered 402, but was renumbered when the above amendment was adopted.

402½. *Adulteration of candy.* Any person who adulterates candy by using in its preparation any other deleterious substances, or who sells for sale any candy or candies adulterated with any other deleterious substance, shall be guilty of a misdemeanor. [Amendment approved March 10, 1891, Stat. 25]

This section was originally numbered 402, but was renumbered when the above amendment was adopted.

fighting, with or without gloves, whereby bruising or maiming, or other serious bodily injury, may result to the participants.

SEC. 2. Any and all persons engaging in contests designated in section one of this act, either as principals, aids, seconds, or backers, shall be guilty of felony, and upon conviction shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned in the state prison not less than one year nor more than three years.

SEC. 3. This act shall take effect immediately.

424. Indictment for embezzlement 70 Cal. 523.

Evidence of embezzlement 66 Cal. 271; 70 Cal. 523.

Embezzlement is extraditable. 66 Cal. 271

427. Fines and forfeitures imposed by justice of Los Angeles should be paid into county treasury. 65 Cal. 476.

428. Obstructing officer in collection of tax: 91 Cal. 510.

Street poll tax belongs to municipality: 91 Cal. 510.

435 Separate licenses for city and county: 69 Cal. 608

447 Information for arson 71 Cal. 48; 81 Cal. 616.

Evidence 86 Cal. 403.

459. What constitutes burglary: 65 Cal. 225, 94 Cal. 596; 91 Cal. 481

Indictment and information. 65 Cal. 225; 67 Cal. 103; 74 Cal. 188, 77 Cal. 41; 94 Cal. 596; 91 Cal. 91, 81 Cal. 209, 86 Cal. 238.

Evidence 65 Cal. 225, 67 Cal. 50; 70 Cal. 193, 73 Cal. 511; 79 Cal. 361, 94 Cal. 596, 94 Cal. 481, 85 Cal. 374, 93 Cal. 111; proof of value 92 Cal. 94

Instructions. 65 Cal. 225, 65 Cal. 260, 72 Cal. 62; 88 Cal. 114; 94 Cal. 90; 88 Cal. 374, 96 Cal. 239.

460 Degree of burglary. 65 Cal. 260; 73 Cal. 580; 96 Cal. 239; 88 Cal. 140.

461 Punishment - Previous conviction 65 Cal. 300; 68 Cal. 111, 84 Cal. 170, 88 Cal. 140, 88 Cal. 171; 89 Cal. 421

470 Instrument susceptible of forgery. 91 Cal. 470; school warrant 91 Cal. 470

Indictment for forgery: 84 Cal. 567; 66 Cal. 262; 70 Cal. 461, 77 Cal. 464, 92 Cal. 590; 91 Cal. 470.

Evidence 65 Cal. 275; 91 Cal. 470; 92 Cal. 590.

Possession of counterfeit implements as evidence: 80 Cal. 285.

472 Forgery of decree of divorce: 66 Cal. 262

476 Forgery of check: 90 Cal. 586.

480. Counterfeiting of foreign bank-notes. 80 Cal.

Cal. 237, 238 Cal. 237, 238 Cal. 237, 238
46; 95 Cal. 227, 81 Cal. 125.

Larceny and false pretenses
Larceny and embezzlement, of
Information and indictment:
Cal. 23, 80 Cal. 299, 91 Cal. 197.

Possession of stolen property:
Cal. 64, 65 Cal. 668, 63 Cal. 104, 71 Cal.
374.

Evidence generally — Crime must
Cal. 101, acts of another, when comp.
exam. not in scope of conviction, 73
83 Cal. 371, verdict, 31 Cal. 40, 91 Cal. 2
94 Cal. 255, cross-examination, what n.
Cal. 371, reasonable doubt, 85 Cal. 569,
tent. 80 Cal. 16.

Instructions 83 Cal. 374; 95 Cal.
515.

485. Larceny of lost property.

487. Grand larceny, what con.
Cal. 15, 65 Cal. 1, 89 Cal. 223.

Indictment. 66 Cal. 184; 73 Cal. 7
90 Cal. 569.

Evidence and instruction — Ev.
Cal. 23, instructions 70 Cal. 643

Verdict of "guilty as charged"

488. Petit larceny: 66 Cal. 184; 73

490. Punishment of petit larceny

499. Fraudulently taking water from mains. 86 Cal. 215.

503. Crime when larceny and not embezzlement: Cal. 265.

Embezzlement is extraditable: 86 Cal. 271.

Indictment 66 Cal. 344, 69 Cal. 226, 77 Cal. 120; 82 Cal. 5; 86 Cal. 393.

Evidence—Proving venue: 72 Cal. 46; evidence of other offenses: 86 Cal. 393; 66 Cal. 271.

Offer to return embezzled moneys: 80 Cal. 52.

Verdict not set aside, though evidence weak: 77 Cal. 560.

504. Embezzlement by secretary of harbor commissioners. 66 Cal. 271.

506. Embezzlement by attorney 69 Cal. 226; evidence: Cal. 226; indictment: 69 Cal. 226.

Embezzlement by assignee for benefit of creditors: 80 Cal. 52.

507. Embezzlement by bailee, indictment for: 71 Cal.

508. Embezzlement by agent: 86 Cal. 631; 86 Cal. 393; Cal. 344, 69 Cal. 226.

Venue in embezzlement by agent. 86 Cal. 631.

514. Pronouncing judgment 71 Cal. 384.

518. Elements of offense: 95 Cal. 640.

519. What threat must be implied in letter: 95 Cal.

523. Threatening letter. 95 Cal. 640.

Elements of offense 95 Cal. 640.

Information for sending threatening letter: 81 Cal.

Evidence: 81 Cal. 275, 95 Cal. 640; proof of venue 81 Cal.

529. False personation: 77 Cal. 436.

532. Jurisdiction over offense of false pretenses: Cal. 273, 81 Cal. 468.

Pretenses not relied upon 84 Cal. 37.

False representations as to title. 84 Cal. 468.

False token, what is 70 Cal. 116. See 77 Cal. 173.

Evidence and instructions: 84 Cal. 468, 70 Cal. 116; 92 Cal. 41.

Indictment and information: 66 Cal. 10, 70 Cal. 116; 70 Cal. 529, 81 Cal. 158.

537. Every person mortgaging certain properties with intent to defraud mortgagee, etc., guilty of larceny. Every

or assigns, transfers, sells, takes, or otherwise disposes of, or permitting, taking, driving, or carrying away of such mortgaged property from the county where it was mortgaged, without the written consent of the mortgagee, shall be guilty of larceny, and shall be [Amendment approved March 9, 1893, in effect immediately]

538. Misrepresentation of news or demeanor. Every proprietor or publisher of a newspaper or paper or periodical who shall willfully misrepresent the circulation of such paper, for the purpose of securing an increase of postage, shall be deemed guilty of a misdemeanor. [Amendment added March 11, 1893; Section amended immediately.]

538. Further encumbrance or sale. Every person who, after mortgaging as provided in section two thousand nine hundred and thirty of the civil code, excepting locomotives, stock of a railroad, steamboat and vessels, during the existence of the mortgage, shall

ance is to be made. [*New section added March 9, Stats. 1893, p. 120; in effect immediately.*]

Attempting to place bomb on track: 75 Cal.

Injuring public jail 68 Cal. 434, indictment for: 234.

Putting poison into watering trough: 81 Cal. 210.

Treatment for using poisonous substance: 81 Cal.

At certain times misdemeanor to hunt quail, wild geese, &c. Every person who, in the state of California, on the first day of March and the first day of September in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, dead or alive, except for purposes of propagation, any quail, bob-white, partridge, grouse, or any kind of wild duck, snipe, or rail, shall be guilty of a misdemeanor.

Every person who, in the state of California, shall take, kill, or destroy the eggs of any quail, bob-white, partridge, pheasant, grouse, or dove, or any kind of wild bird, shall be guilty of a misdemeanor.

Every person who, in the state of California, between the first day of March and the first day of August in any year, shall hunt, pursue, take, kill, or destroy, or have in his possession, doves, shall be guilty of a misdemeanor.

Every person who, in the state of California, shall, between the two years next (except from September first to October fifteenth in each year) after the passage of this act, hunt, pursue, take, kill, or destroy any male deer, antelope, mountain sheep, or buck, shall be guilty of a misdemeanor.

Every person who, in the state of California, shall at any time hunt, pursue, kill, take, or destroy any female antelope, etc., mountain sheep, or doe, shall be guilty of a misdemeanor.

Every person who shall at any time hunt, pursue, take, kill, or destroy any spotted fawn, shall be guilty of a misdemeanor.

Every person who shall take, kill, or destroy, at any time, any bird mentioned in this section, unless the con-

elk, antelope, or mountain
demeanor.

Every person who shall
sale, transport or carry, or ha
or deerskin, or any deer hide
dence of sex has been remo
game at a time when it is un
be guilty of a misdemeanor.

Every person who, in the
within the two years next a
hunt, pursue, take, kill, or d
session, except for purposes of
shall be guilty of a misdemeanor.

Every person who shall at
quail, partridge, or grouse, a
sell, transport, or give away, o
have in his possession, any qua
has been snared, captured, or
any net or pound, is guilty of

Proof of possession of any
which shall not show evidenc
means other than a net or po
evidence, in any prosecution f
of this section, that the per
shall be guilty of a misdemeanor.

age, for the purpose of killing or destroying any wild duck, rail, quail, partridge, pheasant, or grouse, shall be guilty of a misdemeanor.

Every person who, upon any inclosed or cultivated grounds which are private property, and where signs are displayed forbidding such shooting, shall shoot any quail, dove, pheasant, partridge, grouse, dove, or wild duck, without permission first obtained from the owner or person in possession of such grounds, shall be guilty of a misdemeanor.

Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than twenty dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than ten days, or be punished by both such fine and imprisonment. One half of all moneys collected for fines for violations of this section shall be paid to the informer, one quarter to the district attorney of the county, and one quarter shall be paid into the fish commission fund for the purchase and distribution of game birds in the various counties of the state. [*Amendment approved March 23, 1893; Stats. 1893, p. 278, in effect immediately*]

This section was also amended in 1891: Stats. 1891, p. 472.

633. Misdemeanor to take trout in certain season. Every person who takes, catches, or kills, or exposes for sale, or has in his possession, any speckled trout, brook or salmon trout, or any variety of trout between the first day of November and the first day of April in the following year, except salmon trout taken with rod and line in tide water, is guilty of a misdemeanor. [*Amendment approved March 27, 1891; Stats. 1891, p. 110*]

634. Act amending section of code relating to fish and game is constitutional. 73 Cal. 257.

Fines for violating game laws, how disposed of: 78 Cal. 257.

636. Misdemeanor to set net, pound, etc., for fish. Every person who shall set, use, or continue, or who shall assist in setting, using, or continuing any pound, weir, set net, trap, or any other fixed or permanent contrivance for catching fish in the waters of this state, is guilty of a mis-

guilty of a misdemeanor, who shall extend, set, use, or continue, or use, extend, using, or continue lines or Chinese shrimp or bag or similar character, for the catching of this state, is guilty of a misdemeanor, who, by seine or any other means, fish of any species, and who shall take the water immediately and alive, for sale any such fish, fresh or dried, meanor; *provided*, that it shall be any sturgeon gear which will produce lions and other fish-destroying and assist of hooks made from not larger than number five wire of measurement. Permission to set may only be granted by the state board and upon the payment to them of five dollars. Every person who shall set or used, or assist in the same herein, is guilty of a misdemeanor, and if convicted of a violation of any of the provisions of this act, the offender shall be punished by a fine of not more than five dollars, and not more than five months imprisonment in the county jail.

at any time. It shall not be lawful for any person to buy or sell, or offer or expose for sale, within this state, any kind of trout (except brook trout) less than eight inches in length. Any person violating any of the provisions of this section is guilty of a misdemeanor. The board of supervisors of the several counties of this state is authorized by ordinance, duly passed and published, to change the beginning and ending of the close season provided in section six hundred and twenty-six of this code, so as to make the same conform to the needs of their respective counties, whenever, in their judgment, they deem the same advisable. [*Amendment approved March 23, 1893; Stats. 1893, p. 217, in effect immediately.*]
See ante, sec. 634, note.

637. Failure to construct or repair fish ladder. Every owner of a dam or other obstruction in any running water in this state who, after being ordered and notified by the fish commissioners to construct a fish ladder on or to repair a fish ladder already constructed on such dam or other obstruction according to the plans of the fish commissioners, fails to construct or repair such fish ladder within thirty days after such notice is guilty of a misdemeanor, and on conviction shall pay a fine of not less than fifty dollars nor more than two hundred, or by imprisonment in county jail of the county in which such conviction is had of not less than twenty-five days nor more than one hundred days.

One half of all moneys collected as fines for violations of the provisions of this act shall be paid to the owner, one fourth to the district attorney of the county where the conviction is secured, and the remaining one fourth shall be paid to the state board of fish commissioners of this state, to be by them used for the purposes and in conformity of "an act to authorize the state board of fish commissioners to import game birds into the state for propagation," approved March sixteenth, eighteen hundred and eighty-nine. [*Amendment approved March 11, 1901; Stats. 1901, p. 33*]

647. Vagrancy Regularity of punishment. 83 Cal. 112.
654. Power to define offenses and fix penalties thereon rests entirely with the legislature. 94 Cal. 573.

3. Every person who roams about
without any lawful business; or, —

4. Every person known to be a
glar, or confidence operator, either
or by his having been convicted of
and having no visible or lawful
found loitering around any steam
depot, banking institution, broker's
amusement, auction room, store, or
conveyance, car, or omnibus, or at any
assembly; or, —

5. Every idle or dissolute person
thieves, who wanders about the streets
hours of the night; or, —

6. Every person who lodges in a
outhouse, vessel, or place other than
lodging purposes, without the permission
party entitled to the possession thereof.

7. Every lewd or dissolute person
about houses of ill-fame; or, —

8. Every person who acts as a
attorneys in and about police courts,
corporated cities or cities and towns.

ion, who shall hereafter coerce or compel any persons to enter into an agreement, either written or verbal, not to join or become a member of any labor union, as a condition of such person or persons securing employment or continuing in the employment of a person or corporation, shall be guilty of a misdemeanor. [Amendment approved March 14, 1893, Stats. 176.]

"Conviction," meaning of 68 Cal. 176.

Right to fair trial by influencing jury by newspaper articles 80 Cal. 350.

Private counsel for prosecution. 87 Cal. 348.

Bias and prejudice of prosecuting attorney: 84

of accused to counsel: 80 Cal. 296.

Improper remark of judge on the evidence: 80 Cal.

Excluding persons from court-room: 63 Cal. 223; 73

Admission, admissibility 66 Cal. 676, act allowing deposition read is constitutional. 66 Cal. 101.

Once in jeopardy 65 Cal. 232; 67 Cal. 99; 68 Cal. 117; 73 Cal. 540; 76 Cal. 57; 77 Cal. 176; 77 Cal. 213; 77 Cal. 178; 79 Cal. 428; 84 Cal. 441; 84 Cal. 468; 85 Cal. 281; 94 Cal. 301; 94 Cal. 112.

Alibi: 65 Cal. 100; 94 Cal. 373.

Retrial for variance New information: 89 Cal. 223;

Distorted statements as evidence: 63 Cal. 613.

Impeachment of person as witness. 78 Cal. 84; 78 Cal. 109; 86 Cal. 17.

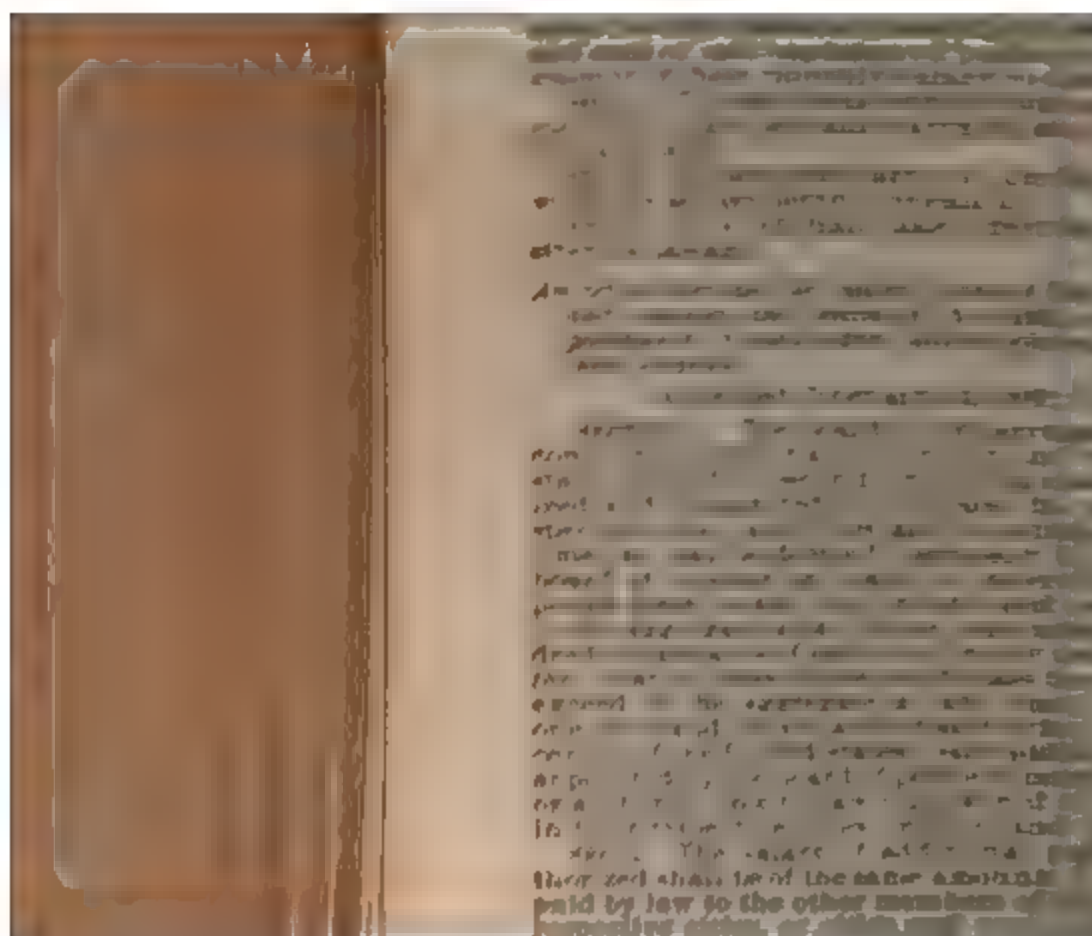
Police force of Sacramento. 85 Cal. 408.

Insurance fund 87 Cal. 543; 80 Cal. 266.

provide for the compensation of the chief and captain of police and police officers in cities in the state of California having not less than ten thousand and not exceeding twenty thousand inhabitants

[Approved March 23, 1893; Stats. 1893, p. 280]

§ 1. The police officers and captains of police in all cities in this state containing a population of not less than ten thousand and not exceeding twenty-five thousand shall receive a salary of not less than one hundred dollars and not more than one hundred and twenty-five dollars per month; the chief of police in all such cities shall receive a salary of not less than one hundred and twenty-five dollars and not more than one hundred and fifty dollars per month.



act authorizing and requiring boards or commissions having the management and control of paid police force to grant the members thereof yearly vacations.

[Approved March 10, 1891; Stats. 1891, p. 47.]

SECTION 1. In every city or city and county of this state where there is a regularly organized paid police force, the board of supervisors, common council, commissions, or other body having the management and control of the same, are authorized and required once in every year to provide for granting each member thereof a leave of absence from active duty for a period of not less than ten nor more than fifteen days. Leaves of absence so granted must be arranged by said board or commissions so as not to interfere with the proper operation of any such city or city and county, or to impair in any way the efficiency of the department, and leaves of absence granted in case of sickness or in consequence of wounds or injuries received while in the discharge of duty shall not be deducted to be or become a part of the leave of absence provided for by this act. No deduction must be made from the salary of any police officer granted a leave of absence under provisions of this act.

SEC. 2. This act shall take effect immediately.

act to amend an act entitled "An act to create a police relief, health, life insurance, and pension fund in the several counties, cities and counties, cities, and towns of the state," approved March 1889.

[Approved March 31, 1891; Stats. 1891, p. 429.]

SECTION 1. Section (1) of the "Act to create a police relief, health, and life insurance and pension fund in the several counties, cities and counties, cities, and towns of the state," approved March fourth, eighteen hundred and eighty-nine, is hereby amended so as to read as follows:—

SECTION 1. The chairman of the board of supervisors of the county, city and county, city, or incorporated town in which there is no board of police commissioners, the treasurer of the county, city and county, or incorporated town, and the chief of police, and their successors in office, are hereby constituted a board of trustees of the police relief or pension fund of the police department, to provide for the disbursement of the same and to designate the beneficiaries thereof, as hereinafter directed, which board shall be known as the "Board of Police Pension Fund Commissioners"; provided, however, that where there is in any county, city and county, city, or town, a board of police commissioners, then such body shall constitute said board of trustees of the police relief and pension fund of the police department.

SECTION (2) two of said act is hereby amended so as to read as follows:

SECTION 2. They shall organize as such board by choosing one of their number as chairman, and by appointing a secretary. The treasurer of the county, city and county, city, or town shall be ex officio treasurer of said fund. Such board of

paid them.

An act to amend section seven of an act to provide for a police relief, health, and life insurance fund for the several counties, cities and counties of this state."

[Approved March 31, 1891; E.]

SECTION 1. Section seven of said act is amended to read as follows: -

Sec. 1. In 7. Whenever any member of such county, city and county, city, or town, or of the family of such member, or if there be no widow or child, or unmarried sisters, shall be entitled to the same from such fund.

SEC. 2. This act shall take effect from and after the date of its passage.

772. Misconduct of officer. - An act to amend section 772 of the Penal Code, 83 Cal. 46; 85 Cal. 580, 85 Cal. 106.

Act of March 30, 1874, providing for the appointment of officers, was abolished by the new code.

784. Subsequent arrest for former proceeding pending, effect of.

788. Property brought into state. - An act to amend section 788 of the Penal Code, 81 Cal. 23.

789. No limitation in certain offenses. - An act to amend section 789 of the Penal Code, 81 Cal. 23.

Limitation of misdemeanor: 85 Cal. 86.

Swearing to complaint. 65 Cal. 615.

Date of filing — Of order of commitment: 68 Cal. 576;
 shorthand reporter's notes of the evidence 65 Cal. 107.

Salary in examination or commitment: 68 Cal.

Statement of offense in indictment. 66 Cal. 662; 67

Defendant charged by fictitious name: 73 Cal. 272.

Complaint, sufficiency of to sustain warrant of arrest. 164, 91 Cal. 28.

Commitment by one and examination by another. 65 Cal. 216.

Mandamus to compel justice to proceed with pre-examination. 66 Cal. 594.

Continuances, consent to: 75 Cal. 301.

Admission of reporter's transcript of testifying witness. 75 Cal. 301.

Failure to ask witness his business is not prejudicial. 60 Cal. 601.

Section allowing depositions taken on preliminary examination to be read is constitutional. 68 Cal. 101.

Compensation of shorthand reporter: 83 Cal. 361.

Transcript of reporter's notes as evidence: 75 Cal. 98;

Right to question. 75 Cal. 98.

Veracity or profession of deponent, what statement of fact. 75 Cal. 301.

Commitment, sufficiency of and validity. 65 Cal. 216; 2; 68 Cal. 576; 73 Cal. 252, 84 Cal. 598, 85 Cal. 309; 85 Cal. 316, 30 Cal. 195, 93 Cal. 377, 94 Cal. 497, 96 Cal. 315.

Commitment of defective commitment. 85 Cal. 309.

Warrant of commitment will be presumed to be made out as required by this section, when. 68 Cal.

Deposition taken pending an information upon commitment cannot be read. 84 Cal. 598.

Failure to return depositions. 66 Cal. 662; 95

Legality of grand jury not determined upon writ in an agreed case, when: 91 Cal. 535.

Collateral attack on validity of grand jury: 69

Challenge after discharge of grand jury: 88

920. Right of defendant to jury: 78 Cal. 328.

926. Grand juror as a witness.

942. Effect of dismissal of indictment. 218

943. Indorsement of name of defendant on indictment. 71 Cal. 212, 77 Cal. 618.

944. Time for filing indictment.

953. Name of defendant on indictment. 60

956. Misnomer of person in indictment. 226; 72 Cal. 402, 87 Cal. 281.

958. Indictment following information. 116, 82 Cal. 38, 91 Cal. 465; 88 Cal. 178 Cal. 84, 81 Cal. 158.

959. Indictment in particular offenses.

General rules as to indictment required. 78 Cal. 84, 95 Cal. 116; conformity to statutory provisions; Cal. 585. See 98 Cal. 171.

Affirmative showing of jurisdiction.

Omission of name of county in indictment.

Series of acts constituting one offense.

Misnomer of prosecutrix. - 4

Misplacement of words. 88 Cal. 178

Criminal intent need not be shown.

Charging different offense than that in indictment. 91 Cal. 640.

Amendment of indictment.

970. Withdrawal of indictment.

- Setting aside information or indictment,**
 as for Want of jurisdiction 68 Cal. 500; 65 Cal. 107.
 arising to complaint before justice 65 Cal. 613.
 validity in warrant of arrest 91 Cal. 23.
 where no offense in commitment or depositions 91 Cal. 91.
 set in complaint 96 Cal. 315.
 oath administered by clerk of police court 96 Cal. 315.
 commitment 93 Cal. 377, 94 Cal. 497, 84 Cal. 616, 84 Cal.
 Cal. 84, 76 Cal. 328.
 commitment not based on any charge for which defendant held to
 66 Cal. 894.
 notation of defendant by different names 65 Cal. 613.
 source of information from commitment 94 Cal. 497. See 94
 Cal. 497.
 commitment without giving defendant opportunity to challenge
 jury 88 Cal. 233.
 charge on habeas corpus 79 Cal. 554.
 motion of trial court on motion - Presumption 91 Cal. 640.
Demurrer to indictment because commitment
 82 Cal. 120.
Demurrer properly overruled if indictment sufficient
 art objected to is stricken out 87 Cal. 122.
Confession of demurrer 65 Cal. 664.
Argument on demurrer - Appeal, how may be taken:
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Presence of counsel for defendant on overruling de-
 murrer 73 Cal. 220.
Allowing demurrer Ordering new indict-
 ment 77 Cal. 20.
Arrest of judgment: 82 Cal. 620, 83 Cal. 374, 92 Cal.
 66 Cal. 230.
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Effect of withdrawing plea of guilty: 82 Cal.
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Withdrawal of plea after punishment fixed: 67 Cal.
 113.
Trial waived by plea of guilty: 67 Cal. 113.
This section, providing that acquittal for vari-
ous offenses, is constitutional. 79 Cal.
 444.
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Asking defendant as to prior convictions: 65
 Cal. 113.
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stitutional. 65 Cal. 205; 73 Cal. 438.
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 600 87 Cal. 348.

1046 Formation of jury: 618.

1052. Postponement and of Cal. 394; 69 Cal. 276, 76 Cal. 328, 77 Cal.

1055. Common-law jury: 87.

1059 Challenge to panel: 73.

1067 Instruction as to right 828, 88 Cal. 483, 92 Cal. 594.

1068. Objection to competency first time after verdict rendered is not

1069 Peremptory challenge 87 Cal. 117; 96 Cal. 125, 96 Cal. 315.

1072 Challenge for cause: 73.

1074. Challenge for bias: 73 Cal. 343, 96 Cal. 125.

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1093. Reading information to 73 Cal. 548, 73 Cal. 511, 88 Cal. 117, 87 Cal. 281.

Statement of case for prosecution

Opening statement for defense 318.

Prejudicial conduct of district 92 Cal. 222; 95 Cal. 227.

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Character of unimpeached witness: 93 Cal. 598.
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As evidence of guilt 65 Cal. 101, 74 Cal. 642; 77 Cal. 1, 160, 84 Cal. 276, 84 Cal. 573.

Relations of witness with third persons: 87 Cal. 509.

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Proof of identity of defendant. 91 Cal. 265.

69 Cal. 180; 69 Cal. 552, 72 Cal. 212; 78 Cal. 317, 85 Cal. 171, 85 Cal. 421, 86 Cal. 225, 86 Cal. 329, 86 Cal. 403, 92 Cal. 550.

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Examination. 92 Cal. 506; 92 Cal. 568, 94 Cal. 509; 96

Defendant as a witness, instruction as to: 96 Cal. 171; 84

Opening case: 65 Cal. 104.

Relation of testimony. 84 Cal. 573; 94 Cal. 509.

Burden of proof in homicide 65 Cal. 101; 71 Cal. 286; 80 Cal. 160 81 Cal. 142 83 Cal. 380, 86 Cal. 144, 86 Cal. 295, 87 Cal. 348, 91 Cal. 98, 94 Cal. 95.

Section does not apply to assaults to commit murder. 41, 88 Cal. 422

Evidence in forgery See *ante*, sec. 470, note.

False pretenses See *ante*, sec. 532, note.

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Corroboration. 65 Cal. 307 66 Cal. 468 71 Cal. 17, 73 Cal. 348, 75 Cal. 301, 81 Cal. 180, 85 Cal. 171, 89 Cal. 492.

Instruction to acquit 70 Cal. 17

View of place of crime 68 Cal. 623, 70 Cal. 193; 72 Cal. 117, 71 Cal. 569, 86 Cal. 225.

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Cal. 296; 84 Cal. 31, 85 Cal. 231; 85 Cal.
117; 89 Cal. 492; 92 Cal. 568; 93 Cal. 607;
93 Cal. 641; 96 Cal. 313.

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Cal. 521, 76 Cal. 386; 94 Cal. 509; 94 Cal.

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81 Cal. 366.

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Instructions correct as a whole.

Requesting instructions. 93 Cal.

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1131. **Embezzlement.** See ante,

1137. **Receiving evidence out of court.**
Cal. 482.

1138. **Recharging jury.** 65 Cal.

1140. **Discharge of jury, presence of jury.**
Cal. 57.

1142. **Discharging jury on instructions.**
621.

1143. **Presence of defendant at trial.**
Cal. 30 Cal. 402.

1171. Bill of exceptions. 72 Cal. 46, 73 Cal. 537, 75 Cal. 306, 78 Cal. 405; 86 Cal. 154, 94 Cal. 502, 96 Cal. 17.

Authentication of bill of exceptions 78 Cal. 1; 83 Cal. 419.

1174. Settlement of bill of exceptions; 73 Cal. 537, 73 Cal. 378; 73 Cal. 1, 74 Cal. 188, 76 Cal. 513; 76 Cal. 328; 78 Cal. 34; 94 Cal. 502, 96 Cal. 596.

1181. New trial - Receiving evidence out of court: 71 Cal. 395; 73 Cal. 405, 74 Cal. 482, 76 Cal. 428.

Inefficiency of evidence 66 Cal. 597, 67 Cal. 31, 68 Cal. 573.

Illness of juror 76 Cal. 573.

Separation Drinking Misconduct of jury. 78 Cal. 317; 80 Cal. 31, 86 Cal. 27, 88 Cal. 114, 88 Cal. 602.

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1185. Motion in arrest of judgment, grounds of 71 Cal. 384, review of on appeal, 81 Cal. 61 - 96 Cal. 315.

1191. Pronouncing sentence, time of 65 Cal. 174; 88 Cal. 176, waiver of time. 88 Cal. 141.

Commitment upon judgment of conviction, recitals in: 83 Cal. 620.

1200. Informing defendant of his rights before pronouncing judgment 70 Cal. 465, 83 Cal. 620, 88 Cal. 171.

1202. Judgment - Sufficiency and validity: 78 Cal. 84; 88 Cal. 171, 88 Cal. 114, 89 Cal. 421, 87 Cal. 122, 87 Cal. 281.

Entry of judgment nunc pro tunc: 79 Cal. 621.

Vacating void sentence - Second sentence. 84 Cal. 441.

Separate convictions - Duration of imprisonment. 86 Cal. 427.

1205. Imprisonment for fine. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied. But the judgment must specify the extent of the imprisonment, which must not exceed one day for every two dollars of the fine, nor extend in any case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. [*Amendment approved March 10, 1891; Stats. 1891, p. 52.*]

Imposing imprisonment on non-payment of fine: 66 Cal. 184, 73 Cal. 486, 78 Cal. 304; 82 Cal. 273, 82 Cal. 154; 82 Cal. 518, 84 Cal. 388, 84 Cal. 16, 84 Cal. 468; 85 Cal. 36, 85 Cal. 600, 88 Cal. 79, 89 Cal. 411, 96 Cal. 32.

1207. Judgment must conform to verdict: 71 Cal. 384.

Judgment roll: 77 Cal. 179.

is insane, the warden must suspend the execution of the judgment until he receives a warrant from the governor, or from the judge of the superior court of the county in which such state prison is situated, directing the execution of the judgment. If the inquisition finds that the defendant is insane, the warden must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment. [*Amendment approved March 31, 1891; Stats. 1891, p. 273.*]

1225. *Duty of warden when female is supposed to be pregnant.* If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the warden of the state prison to whom she is delivered for execution, with the concurrence of the superior court of the county in which such state prison is situated, may impanel a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of such county, and the provisions of sections twelve hundred and twenty-two and twelve hundred and twenty-three apply to the proceedings upon the inquisition. [*Amendment approved March 31, 1891; Stats. 1891, p. 273.*]

1226. *Duty when found to be pregnant.* If it is found by the inquisition that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant, the warden must suspend the execution of the judgment, and transmit the inquisition to the governor. When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment. [*Amendment approved March 31, 1891; Stats. 1891, p. 274.*]

1227. *Duty of officers where judgment of death has not been executed.* If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the district attorney of the county in which the conviction is had, must order the defendant to be brought before it, or, if he is at large, a warrant for apprehension may be issued. Upon the defendant being brought before the court, it

judgment accordingly. [Amendment approved March 31, 1891; Stats. 1891, p. 274.]

1229. *Where judgment must be present.* A judgment of death in the walls of one of the state prisons by which judgment is rendered in state prison where the execution is to be present at the execution, and must have a physician, the attorney-general or a physician, the attorney-general or twelve reputable citizens, to be selected, shall, at the request of the defendant, have the presence of the ministers of the gospel, not exceeding five, may name, and any persons, relatives, not exceeding five, to be present at the execution. But no other person in this section can be present at the execution. person under age be allowed to witness the execution. [Amendment approved March 31, 1891; Stats. 1891, p. 274.]

See ante, sec 1217, note.

1230. *Return of warden.* After the execution is made, the warden must make a return upon the court by which the judgment was rendered, of the time, mode, and manner in which the execution was made. [Amendment approved March 31, 1891; Stats. 1891, p. 274.]

8. Record on appeal 77 Cal. 629; 77 Cal. 808; 83 Cal. 607; 63 Cal. 234; 80 Cal. 153, error must affirmatively be; 78 Cal. 1. See *ante*, Code of Civil Procedure, sec. 950.

9. Dismissal of appeal: 95 Cal. 594.

9. Provision requiring decision of appeal within days is directory: 91 Cal. 25.

9. Errors not affecting substantial rights: 65 Cal. 71; 71 Cal. 387; 73 Cal. 316; 93 Cal. 277. See *ante*, sec. 53 of Code of Civil Procedure, note.

Review of evidence 83 Cal. 380; 85 Cal. 421; 86 Cal. 329; 268; 92 Cal. 41; 93 Cal. 277; 93 Cal. 536. See *ante*, sec. 956 Code of Civil Procedure, note.

Assumptions on appeal 83 Cal. 374; 88 Cal. 114; 88 Cal. 176; 92 Cal. 590. See *ante*, sec. 53 of the Code of Civil Procedure, note.

Application for rehearing 77 Cal. 618. See *ante*, sec. 46 Code of Civil Procedure, note.

9. Power to grant new trial against objection of defendant: 91 Cal. 379.

Power of superior court after reversal of order granting new trial 84 Cal. 441.

9. Admission to bail, discretion as to 82 Cal. 183.

Considerations determining amount of bail 82 Cal. 183.

Occurrence of another offense, effect of on liability of defendant: 92 Cal. 560.

9. Admission to bail on charge of murder in the first degree 92 Cal. 183.

9. Bail pending appeal 59 Cal. 79; 68 Cal. 176.

9. Admission to bail by magistrate of another county: 65 Cal. 582.

9. Bail pending appeal 68 Cal. 176; 89 Cal. 79; 70 Cal. 176.

9. Affidavit of justification to bail bond: 81 Cal. 200.

9. Impeachment of witness 69 Cal. 601; 72 Cal. 212; 828; 80 Cal. 160. See *ante*, Code of Civil Procedure, secs. 82, note.

Prosecuting witness, right to testify: 84 Cal. 468.

Defendant in different information may be called: 70 Cal. 176.

9. Defendant as a witness 65 Cal. 602; 68 Cal. 101; 71 Cal. 73; 73 Cal. 511; 73 Cal. 415; 78 Cal. 84; 85 Cal. 568.

9. Compelling attendance of witness 82 Cal. 456.

9. Convicted prisoner as a witness: 92 Cal. 482; 89 Cal. 176.

1366. Experts as to sanity of
Cal. 328

Submission of question of insanity

1382 Speedy trial Dismissal
in sixty days. 69 Cal. 240, 74 Cal. 575;
Cal. 515.

1388 Probationary treatment
ers, constitutionality of law: 71 Cal.

Act establishing Whittier re-
form school: 93 Cal. 632.

1426. Jurisdiction of justice:

Power of justice to dismiss: 85 Cal.

Police courts, jurisdiction of: 85
Cal. 27; 85 Cal. 333.

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Jurisdiction of recorder's court:

1446 Imprisonment on non pay
84 Cal. 165, 88 Cal. 624.

1470. Appeal from justice's court

1474 Petition must be verified

Petition must disclose evidence
ground of the petition is that the
petitioner is innocent without probable cause: 84 Cal.

1487. Functions of writ of habeas

What considered on hearing of
Cal. 388; 89 Cal. 79; 89 Cal. 421; 89 Cal.

One failing to move to set aside information cannot be discharged on habeas corpus: 65 Cal. 216.

Rule of trial court cannot affect supreme court on application: 89 Cal. 79.

Rehearing — Petition for, will not lie on application for: Cal. 608.

1523 Search-warrants — Power to issue and authority under: 68 Cal. 284.

1526 Certiorari to review action of judge in issuing warrant: 75 Cal. 371.

1547 Extradition of fugitive from justice: 78 Cal. 345; Cal. 95; 88 Cal. 640. See *ante*, sec. 424, note.

1567 Right of defendant to compel attendance of convicted prisoner as a witness: 92 Cal. 482.

1570 Fines imposed by justice of Los Angeles county, imposition of: 65 Cal. 476.

1590. Statutory allowance of credits: 82 Cal. 518.

Duty of warden to discharge prisoner. 82 Cal. 518.

1595 *An act to appropriate the sum of three thousand one hundred dollars to purchase adjacent lands at San Quentin for the use of the state prison, together with the improvements thereon.*

[Approved March 31 1891; Stats. 1891, p. 261.]

SECTION 1. There is hereby appropriated out of any money of the state treasury not otherwise appropriated, the sum of three thousand one hundred dollars, to be paid to the board of state prison directors and to be expended by them as follows, viz: To purchase the property of John Mann at the sum of six hundred dollars; James Crocker at five hundred dollars; Mrs. Sophia H. Edwards, fifteen hundred dollars; Henry Blosser, five hundred dollars.

SEC. 2. The controller of state is hereby authorized and directed to draw his warrant upon the state treasury for the sum of three thousand one hundred dollars, payable to the board of state prison directors, and the treasurer of said state hereby directed to pay the same.

SEC. 3. The payments herein mentioned are to be paid as additional sums to those mentioned in "An act to purchase adjacent lands at San Quentin for the use of the state prison, together with the improvements thereon, and making an appropriation therefor," approved March nineeenth, eighteen hundred and eighty nine.

SEC. 4. This act shall take effect immediately.

An act to authorize the state board of prison directors to pay for certain skilled labor used in the construction of the dam and canal at Folsom prison, and making an appropriation therefor.

[Approved April 5, 1891. Stats. 1891, p. 496.]

SECTION 1. There is hereby appropriated out of any money of the state treasury not otherwise appropriated, the sum of

SEC. 2. The controller of state is to issue his warrant in favor of the state board of prison directors for the amount appropriated by section one, and the treasurer is hereby directed to pay the same upon appropriation.

SEC. 3. Before ordering said claim the prison directors shall require the company to file an itemized account of the goods furnished and used upon the said orders showing the amounts so paid, and all claims against the state of California.

SEC. 4. This act shall take effect after its passage.

An act to provide for certain improvements at Folsom state prison, and making an appropriation therefor.

[Approved April 6, 1891. S. C. 1891, c. 100.]

SECTION 1. There is hereby appropriated out of the state treasury not otherwise appropriated the sum of sixty-five thousand dollars, to be paid to the prison directors, and to be expended at the state prison, for the following improvements: for three hundred convicts in the building; for convicts' dining-room; for necessary ranges, ovens, etc., for the guards' dining-room and kitchen, and for the necessary furniture for the officers and guards, and the necessary for completing the state power-house, and for the plans adopted, and purchasing machinery as is needed for prison work.

SEC. 2. The controller of state is to issue his warrant in favor of the state board of prison directors for the amount appropriated by section one, and the treasurer is hereby directed to pay the same upon appropriation.

ing the passage of this act, to employ any unemployed prisoners in the construction of one or more public roads from the San Quentin state prison to Point Tiburon, in Marin County.

Sec. 2. This act shall take effect immediately.

An act directing the state prison directors of the state of California to employ at least twenty prisoners in the construction of roads to the state prison at San Quentin.

[Approved March 1, 1893, Stats. 1893, p. 141.]

SECTION 1. The state prison directors of the state of California are hereby authorized and directed, during the four years next succeeding the passage of this act, to employ at least twenty prisoners daily, during fair weather, in the construction and repair of suitable public roads as have been or shall hereafter be laid out or opened by the board of supervisors of Marin County, and which extend from the San Quentin state prison, or the grounds surrounding the same, to Point Tiburon, and to all railroad stations in Marin County which lie within three miles of the said state prison.

Sec. 2. This act shall take effect and be in force from and after its passage.

An act to establish board of parole commissioners for the parole of and government of paroled prisoners.

[Approved March 23, 1893, Stats. 1893, p. 183.]

SECTION 1. The state board of prison directors of this state shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned under a sentence other than for murder in the first or second degree, who may have served one calendar year of the term for which he was convicted, and who has not previously been convicted of any other crime in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain while on parole in the general custody and under the control of said board or state prison directors, and subject at any time to be taken back within the inclosure of said prison, and full power to make and enforce such rules and regulations, and to release and imprison any convict so upon parole is hereby conferred upon said board of directors, whose written order, or order by the president of said board, shall be a sufficient warrant for any officers named hereafter, to authorize such officer to return to receive custody any convict for any release or paroled prisoner, and this is hereby made the duty of all chiefs of police and marshals of cities and villages, and the sheriffs of counties and of a police, or constable, and peace officers and constables to execute any such order in like manner as ordinary criminal process. If any prisoner so paroled shall leave the state without permission of said board, he shall be held as an escaped prisoner and arrested by any

Sec. 2. This act shall take effect immediately.

1597 House of correction in San Francisco: 72 Cal. 10; Cal. 78.

powerful and first, eighteen hundred

The first of these is the fact that the
 government has been unable to raise the
 necessary funds to meet its obligations.
 This is due to a combination of factors,
 including a decline in tax revenue and
 an increase in government spending.
 The second factor is the high level of
 inflation, which has eroded the value of
 the government's assets and liabilities.
 Finally, the government has been unable to
 implement effective policies to reduce
 its debt and improve its financial position.

1614. *Provisions for good behavior*
county jail. The board of supervisors
may prescribe and enforce the rules
which such labor is to be performed
of such a distinctive character for
board, in its discretion, may de-
month in which the prisoner ap-
have given a cheerful and willing
and regulations, and that his com-
officer in charge of the jail to be po-
shall, with the consent of the bo-
deducted from his term of sentence.
March 23, 1893. Stats. 1893, p. 296.

AMENDMENTS
TO THE
PENAL CODE

AND
STATUTES RELATING TO THE SUBJECT
MATTERS CONTAINED THEREIN,

ENACTED AT THE

LEGISLATIVE SESSION OF 1895,

WITH REFERENCES TO DECISIONS IN VOLUMES 97 TO 104 INCLUSIVE
OF CALIFORNIA REPORTS.

- 16. Classification of criminal offenses:** 102 Cal. 428.
19. Punishment for misdemeanor: 102 Cal. 428.
32. Criminal act committed in state of voluntary intoxication: 100 Cal. 390; 103 Cal. 575.

40. Any person who acts as an election officer at any election, without first having been appointed and qualified as such, and any person who, not being an election officer, performs or discharges any of the duties of an election officer, in regard to the handling or counting or canvassing of any ballots cast at any election, shall be guilty of a felony, and on conviction be punished by imprisonment in the state prison for not less than two nor more than seven years. [In effect March 26, 1895.]

76. Felony in unlawfully withholding records, etc: 103 Cal. 493.

92. Every judicial officer, except such as may be authorized by official act, is guilty of a misdemeanor who shall ask or receive the fees allowed by law to any stenographer appointed by him, or any other proceedings of any court or investigation, be guilty of a misdemeanor, and shall forfeit his office. Any stenographer appointed by any judicial officer in the or offer to pay, the whole or any allowed him by law for his appointment, shall be guilty of a misdemeanor, and shall be forever disqualified from holding any similar office in the courts of this State. [Chap. 10, § 8, 1895.]

93. Nature of offense under § 92.

94. The superintendent of the State Prison.

subject him, on conviction before a court of competent jurisdiction, to imprisonment in the state prison for a term of not less than two years nor more than five years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or by both such fine and imprisonment. [In effect March 27, 1895.]

118. Language charging perjury under this section: 103 Cal. 427.

153. Compounding felony—Knowledge of actual commission of crime. 103 Cal. 676, 677.

154. Fraudulent removal of property by debtor: 103 Cal. 354.

161. Assignment of claims to attorney with intent to bring suit thereon: 98 Cal. 524.

166. Contempt of court constitutes misdemeanor: 99 Cal. 361.

172. An act to prevent the sale of intoxicating liquors in the immediate vicinity of soldiers' homes.

[Approved March 26, 1895.]

SECTION 1. Every person who sells or gives away any ale, beer, wine, cider, or other intoxicating liquors, within one and one-half miles outside of the boundary line of the lands occupied by any home, retreat or asylum for disabled volunteer soldiers, or soldiers and sailors, which has been or may hereafter be established by the government of the United States, within the state of California, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, and in addition to such fine shall be imprisoned in the county jail thirty days; and upon the conviction of the owner or keeper thereof, the place wherein such intoxicating liquors shall have been sold or given away shall be, by order of the court where a such conviction is made, within ten days thereafter, shut up and abated as a nuisance. And it is hereby made the duty of the district attorney of the county in which any such institution is or may be located to prosecute all offenders against the provisions of this act.

SEC. 2. This act shall take effect from and after its passage.

187. Murder defined: 99 Cal. 3.

189. Homicide in perpetration of felony §
Cal. 3.

211. Robbery defined: 100 Cal. 439.

217. Assault with intent to murder, and assault
with deadly weapon, distinguished: 99 Cal. 232.

220. Assault with intent to commit rape §
Cal. 128.

245. Assault to murder, and assault with deadly
weapon, distinguished: 99 Cal. 232.

262. Capacity to commit offense of rape: 99 Cal.
353.

264. Punishment for offense of rape: 98 Cal. 12.

268. Statutory offense of seduction—Bar to pro-
secution: 97 Cal. 451.

281. Bigamy, who guilty of: 99 Cal. 288.

285. Incest and its punishment: 102 Cal. 94.

310½. Every person who as proprietor, manager or
see, employee, or agent keeps open or conducts, or causes
to be kept open or conducted, any barber-shop, bath-house
and barber-shop, barber-shop of a bathing establishment, or
or hair-dressing establishment, or any place for shaving
or hair-dressing, used or conducted in connection with
any other place of business or resort, or who engages in
work or labor as a barber in any such shop or establish-
ment on Sunday, or on a legal holiday, after the time of
twelve o'clock M. of said day, is guilty of a misdemeanor.
[Approved March 27, 1895.]

883. An act to prevent deception in the manufacture and sale of
butter and of cheese, to secure its enforcement, and to appropriate
money therefor.

[Approved March 9, 1895.]

SECTION 1 That for the purposes of this act, every article
substance, or compound, other than that produced by the
milk or cream from the same, made in the manufacture of

1. Designed to be used as a substitute for butter made of milk or cream from the same, is hereby declared to be imitation butter; and that for the purposes of this act, every substance or compound, other than that produced from milk or cream from the same, made in the same manner, and designed to be used as substitute for cheese made of milk or cream from the same, is hereby declared to be imitation cheese; *provided*, that the use of salt, rennet, and such other materials for coloring the product of pure milk and cream, shall not be construed to render such product an imitation; and *provided* that nothing in this section shall prohibit the use of pure skimmed milk in the manufacture of

2. No person, by himself or his agents or servants, shall manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, or use, or serve to his guests, boarders, or inmates, in any hotel, eating-house, restaurant, public conveyance, or boarding-house or private hospital, asylum, school, or dispensary or institution, any article, product, or compound made or partly out of any fat oil, oleaginous substance or compound, not produced directly and at the time of manufacture from an adulterated milk or cream from the same, which product or compound shall be colored in imitation of or cheese produced from an adulterated milk or cream from the same; *provided* that nothing in this section shall be construed to prohibit the manufacture or sale, under the regulations hereinafter provided, of substances designed to be used as substitute for butter or cheese, and not manufactured or sold as in this section prohibited.

3. Each person who by himself or another lawfully acquires any substance designed to be used as a substitute for or cheese shall mark by branding, stamping, or stenciling upon the top and sides of each tub, cask, box, or other container in which such articles shall be kept, and in which, if removed from the place where it is produced in a legible manner in the English language, the words "substitute for butter" or "substitute for cheese," as the case may require, printed in plain letter type, each of which shall be less than one inch in height by one-half inch in width, in addition to the above shall prepare a statement printed in Roman type of a size not smaller than ten, stating in English language its name and the name and address of the manufacturer, the name of the place where manufactured, and put up, and also the names and actual percentages of the ingredients used in the manufacture of such imitation or imitation cheese, and shall place a copy of said statement within and upon the contents of each tub, cask, box, or other package, and next to that portion of each tub, cask, box, or other package as a container, and must be lawfully opened, and shall label the top and sides of each tub, cask, box, or other package by affixing thereto a copy of the statement, in such manner, however, as not to cover the

three of this act; and no carrier shall be manufactured, marked, and provided, consigned, and by the carrier name, provided, that this act shall not transit between foreign states and acre

SEC 5. No person, or his agent shall possession or under his control any used as a substitute for butter and cheese box, or other package containing the durably marked and contain a copy of labeled as provided by section three of firkin, box, or other package be opened ment described in section three of this its face up, upon the exposed contents or other package; provided, that this deemed to apply to persons who have session for the actual consumption of

SEC 6. No person, by himself or agent for sale, or take orders for the future designed to be used as a substitute for the name of or under the pretense that cheese, and no person, by himself or substance designed to be used as a cheese unless he shall inform the purchaser of the sale, that the same is a cheese, as the case may be, and shall do at the time of the sale, a copy of the section three of this act, and no person in connection or association with the sale, or advertisement of any substance a substitute for butter or cheese

three of this act, and by a verbal notification to said patron that such substance is a substitute for butter or cheese.

SEC. 8. No action can be maintained on account of any sale or other contract made in violation of, or with intent to violate, this act by or through any person who was knowingly a party to such wrongful sale or other contract.

SEC. 9. Every person having possession or control of any substance designed to be used as a substitute for butter or cheese which is not marked as required by the provisions of this act, shall be presumed to have known, during the time of such possession or control, that the same was imitation butter, or imitation cheese, as the case may be.

SEC. 10. No person shall efface, erase, cancel, or remove any mark, statement or label provided for by this act, with intent to mislead, deceive, or to violate any of the provisions of this act.

SEC. 11. No butter or cheese not made wholly from pure milk or cream, salt and harmless coloring matter shall be used in any of the charitable or penal institutions that receive assistance from the state.

SEC. 12. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall upon conviction thereof, be punished, for the first offense, by a fine of not less than fifty dollars, nor more than one hundred and fifty dollars, or by imprisonment in the county jail for not exceeding thirty days, and for each subsequent offense, by a fine of not less than one hundred and fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment, in the discretion of the court. One-half of all the fines collected under the provisions of this act shall be paid to the person or persons furnishing information upon which conviction is procured.

SEC. 13. Whoever shall have possession or control of any imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese contrary to the provisions of this act, shall be construed to have possession of property with intent to use it as a means of committing a public offense, within the meaning of chapter three of title twelve of part two of an act to establish a Penal Code, passed, that it shall be the duty of the officer who serves a search warrant issued for imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, to deliver to the agent of the dairy bureau, or to any person by such dairy bureau authorized in writing to receive the same, a perfect sample of each article seized by virtue of such warrant, for the purpose of having the same analyzed, and forthwith to return to the person from whom it was taken the remainder of each article seized as aforesaid. If any sample be found to be imitation butter or imitation cheese, or substance designed to be used as a substitute for butter or cheese, it shall be returned to and retained by the magistrate, as and for the purpose contemplated by section

the application of the governor to the prosecution, in the name of the state, for the violation of any of the provisions of this act.

SEC. 15. The governor shall, in pursuance of this act, appoint three real estate appraisers who shall have practical experience in the valuation of dairy products to constitute a state dairy bureau. They shall serve until the first day of July, nineteen-hundred and nineteen, and on the said first day of July, nineteen-hundred and nineteen, the state dairy bureau shall be null and void, all of the provisions of this act shall, however, remain in full force, and the members of said bureau shall serve without salary for twenty days after their appointment to their office as required by the constitution, and shall meet and organize by electing a chairman. One of them may be removed from office for neglect or violation of duty. They shall be appointed by the legislature, not later than the first day of January, nineteen-hundred and nineteen.

SEC. 16. It shall be the duty of the state dairy bureau, as far as possible, to secure, as far as possible, the enforcement of the provisions of this act. The state dairy bureau shall have power to employ such persons as it may deem necessary, including salaried chemists, as from time to time may be required.

SEC. 17. There is hereby appropriated out of the general fund of the state the sum of five hundred dollars for the operation of the state dairy bureau, out of which sum the state dairy bureau shall not otherwise receive any money.

An act to provide against the adulteration of food and drugs.

[Approved March 26, 1895.]

SECTION 1. No person shall, within this state, manufacture, sale, offer for sale, or sell any drug or article of food which adulterated within the meaning of this act.

SEC. 2. The term "drug," as used in this act, shall include medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food," as used herein, shall include all food and articles used for food or drink by man, whether simple, mixed or compound.

SEC. 3. Any article shall be deemed to be adulterated within the meaning of this act:

(a) In the case of drugs: (1) If, when sold under or by a name recognized in the United States pharmacopoeia, it differs from the standard of strength, quality, or purity laid down therein. (2) If, when sold under or by a name not recognized in the United States pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work. (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

(b) In the case of food: (1) If any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength, or purity. (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it. (3) If any valuable or necessary ingredient has been wholly or in part abstracted from it.

(c) If it is an imitation of, or is sold under the name of, another article. (d) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not.

(e) In the case of milk, if it is the produce of a diseased animal. If it is covered, coated, pressed or powdered, whereby its quality or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is.

(f) If it contains any added substance or ingredient which is poisonous or injurious to health. *Provided*, that the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if at least every package sold or offered for sale be distinctly labeled as mixtures or compounds with the name and percent each ingredient therein, and are not injurious to health.

SEC. 4. Every person manufacturing, exposing or offering for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall answer to any person interested or intending the same, who shall apply to him for the purpose, and shall tender him the value of the same, a sample sufficient for the analysis of any such drug or article of food which is in his possession.

SEC. 5. Whoever refuses to comply upon demand with the requirements of section four, and whoever violates any of the provisions of this act, shall be guilty of a misdemeanor, and

incurred in inspecting and analyzing
of which said person may have been
turing, selling, or offering for sale.

SEC 6. This act shall be in force
after its passage.

*An act to prevent the sale of imitation
provide a punishment*

[Approved March 5]

SECTION 1. Any person who, by his
offers for sale, or in any way disposes
position of the appearance of honey,
ency, and taste resembles honey, but
natural product of the bee, or a pure
the representation or claim of pure
honey, or a pure extract therefrom, in
and upon conviction thereof shall be
hundred dollars, or by imprisonment
three months, or by both such fine and

SEC 2. For the purposes of this act
is honey extracted from the comb with
other substances.

SEC 3. This act shall take effect
after its passage.

384. Willful or negligent
misdemeanor: 98 Cal. 270.

424 Felonious contract to
100 Cal. 23.

Omission of

Sufficiency of indictment charging forgery: 103 Cal. 564, 565.

487. Robbery and grand larceny not dependent on value of property taken: 100 Cal. 439.

Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars.

2. When the property is taken from the person of another.

3. When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack, or jenny. [Approved March 9, 1895.]

502½. Every person who, after mortgaging any real property, and during the existence of such mortgage, or after such mortgaged property shall have been sold under an order and decree of foreclosure, and with intent to defraud or injure the mortgagee, his representatives, successors, or assigns, or the purchaser of such mortgaged premises at such foreclosure sale, his representatives or assigns, takes, removes, or carries away from such mortgaged premises, or otherwise disposes of, or permits the taking, removing, or carrying away, or otherwise disposing of, any house, barn, windmill, or water-tank, upon or affixed to such premises as an improvement thereon, without the written consent of the mortgagee, his representatives, successors, or assigns, or the purchaser at such foreclosure sale, his representatives or assigns, is guilty of larceny and shall be punished accordingly. [In effect March 26, 1895.]

503. Embezzlement defined: 100 Cal. 468.

508. Embezzlement by clerk, agent, or servant: 100 Cal. 468.

625. Every person who, in the
between the fifteenth day of February
of October in each year, shall hunt,
destroy, or have in his possession
state of California, or shipped to
other state, territory, or foreign
purposes of propagation, any val-
tridge, robin, or any kind of wild
guilty of a misdemeanor; *provided*,
in possession for the purposes of
obtained, by permit, in writing,
of the county wherein said birds
effect March 27, 1895.]

Violation of game laws a misdemeanor.
483.

626 a. Every person who, in the
between the fifteenth day of February
day of August in each year, shall hunt
or destroy, or have in his possession
killed in the state of California, or

kind of wild duck, shall be guilty of a misdemeanor. [In effect March 27, 1895.]

626 b. Every person who, in the state of California, between the fifteenth day of February and the first day of July in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession any dove or doves, shall be guilty of a misdemeanor. [In effect March 27, 1895.]

626 c. Every person who, in the state of California, shall hunt, pursue, take, kill, or destroy any male deer, between the fifteenth day of October and the fifteenth day of July of the following year, shall be guilty of a misdemeanor. [In effect March 27, 1895.]

626 d. Every person who, in the state of California, shall at any time hunt, pursue, take, kill, or destroy any female deer, or spotted fawn, or any antelope, elk, or mountain sheep, shall be guilty of a misdemeanor. [In effect March 27, 1895.]

626 e. Every person who, in the state of California, shall at any time buy, sell, or offer for sale, the hide or meat of any deer, elk, antelope, or mountain sheep, whether taken or killed in the state of California, or shipped into the state from any other state or territory, shall be guilty of a misdemeanor; *provided*, that nothing in this section shall be held to apply to the hide of any of said animals taken or killed in Alaska, or any foreign country. [In effect March 27, 1895.]

626 f. Every person who shall buy, sell, offer, or expose for sale, transport, or carry, or have in his possession the skin, hide, or pelt of any deer from which the evidence of sex has been removed, shall be guilty of a misdemeanor. [In effect March 26, 1895.]

626 g. Every person who, in the state of California, shall *within the three years next after the passage of this*

626 A. Every cold-storage owner, cold-storage warehouse, tavern, or rant or eating-house keeper, merchant, who shall buy, sell, expose, or offer or have in his possession, in this state, white, partridge, pheasant, grouse, during the time it shall be outlawed, whether taken or killed in the state or shipped into the state from any other foreign country, shall be guilty of a misdemeanor. [Effective March 26, 1895.]

626 i. Every cold-storage owner, keeping a cold-storage warehouse, tavern or eating-house, and every merchant, who shall buy, sell, expose, or offer in this state, any quail, bob white, partridge, wild duck, whether taken or killed in this state, or shipped into the state from any other foreign country, except between the first day of November and the fifteenth day of December, shall be guilty of a misdemeanor.

vated grounds, which are private property, and where signs are displayed forbidding such shooting, except salt-water marsh land, shall shoot any quail, bob white, pheasant, partridge, grouse, dove, deer, or wild duck, without permission first obtained from the owner or person in possession of such grounds, or who shall maliciously tear down, mutilate, or destroy any sign, signboard, or other notice forbidding shooting on private property, shall be guilty of a misdemeanor. [In effect March 26, 1895.]

627 b. Every railroad company, express company, transportation company, or other common carrier, their officers, agents, and servants, and every other person who shall transport, carry, or take out of this state, or shall receive for the purpose of transporting from the state, any deer, deerskin, buck, doe, or fawn, or any quail, partridge, pheasant, grouse, prairie chicken, dove, or wild duck, except for purposes of propagation, or who shall transport, carry, or take from the state, or receive for the purpose of transporting from this state, any such animal or bird, shall be guilty of a misdemeanor; *provided*, that the right to transport for the purposes of propagation shall first be obtained by permit, in writing, from the board of fish commissioners of the state of California. [In effect March 26, 1895.]

627 c. Every person who, in the state of California, shall at any time hunt, shoot, shoot at, take, kill, or destroy, buy, sell, give away, or have in his possession, except for the purpose of propagation, or for educational or scientific purposes, any English skylark, canary, California oriole, humming-bird, thrush, or mocking bird, or any part of the skin, skins, or plumage thereof, or who shall rob the nests, or take or destroy the eggs, of any of the said birds,

shall be guilty of a misdemeanor. [In effect March 5 1895.]

627 d. Any person found guilty of a violation of any of the provisions of the foregoing sections of this article shall be fined in a sum not less than twenty dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than ten days, or be punished by both such fine and imprisonment. All money so collected shall be paid into the general fund of the county in which the conviction is had.

It shall be no defense to a prosecution under this section or for the violation of any provision of the law for the protection or preservation of fish or game, that the fish or game was caught or killed outside of this state. [In effect March 26, 1895.]

628. Every person who takes or catches, buys or has in his possession any striped bass of less than five pounds in weight, is guilty of a misdemeanor. Every person who, at any time, buys, sells, offers, or exposes for sale, or has in his possession any sturgeon less than three feet in length is guilty of a misdemeanor. Every person who, at any time between the first day of April and the first day of September of each year, takes or catches, buys, sells, or has in his possession any fresh shad is guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than fifty dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than fifty days, or be punished by both such fine and imprisonment. It shall be no defense in the prosecution for a violation of the provisions of this section, that the sturgeon sold or possessed was caught outside of this state. Every person who, between

the first day of January and the first day of July, takes or catches, buys, sells, or has in his possession any black bass is guilty of a misdemeanor. [In effect March 26, 1895.]

628 a. Every person who, in the state of California, shall take, catch, or kill, or sells, exposes, or offers for sale, or has in his possession any lobster or crawfish, between the fifteenth day of May and the fifteenth day of July of each year, shall be guilty of a misdemeanor. Every person who, in the state of California, shall at any time buy, sell, barter, exchange, offer, expose for sale, or have in his possession any lobster or crawfish of less than one pound in weight, shall be guilty of a misdemeanor. It shall be no defense in a prosecution for a violation of the provisions of this section that the lobsters or crawfish sold or possessed were caught outside of this state. [In effect March 26, 1895.]

629. Any person, or persons, corporation or corporations, owning, in whole or in part, or leasing, operating, or having in charge, any millrace, irrigating-ditch, or canal, taking or receiving its waters from any river, creek, stream, or lake, in which fish have been placed or may exist, shall put, or cause to be placed and maintain over the inlet of said ditch, canal, or millrace, a wire screen of such construction and fineness, strength and quality, as shall prevent any such fish from entering such ditch, canal, or millrace, when required to do so by the fish commissioners. Any person or corporation violating the provisions of this section, or who shall neglect or refuse to put up or maintain such screen, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and may be imprisoned at the rate of two

March 26, 1895.]

631. Every person who shall at a cage or trap, any quail, partridge, or person who shall sell, transport, or expose for sale, or have in his possession, any quail, partridge, or grouse that has been snared by means of any net or pound, cage or in the state of California, or shipped from any other state, territory, or foreign country, shall be guilty of a misdemeanor; *provided*, the same are for purposes of propagation, written permit first obtained from the game warden in said birds are to be taken. Proof of quail, partridge, or grouse, which shall be shown of having been taken by means other than snare, shall be *prima facie* evidence in any violation of the provisions of this section, and the possession of such quail, partridge, or grouse, whose possession such quail, partridge, or grouse was taken, killed, or destroyed the same shall be a misdemeanor. [In effect March 26, 1895.]

explosives, shall be guilty of a misdemeanor. Every person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than one hundred dollars, or be imprisoned in the county jail, in the county in which the conviction shall be had, not less than one hundred days, or be punished by both such fine and imprisonment. [In effect March 26, 1895.]

632 b. Every person who shall at any time, except with hook and line, take or catch fish of any kind, from any river or stream within the state of California, upon which a United States fish hatchery is in operation, shall be guilty of a misdemeanor. [In effect March 26, 1895.]

633. Every person who takes, catches, or kills, or exposes for sale, or has in his possession, any speckled trout, brook, or salmon trout, or any variety of trout, between the first day of November and the first day of April in the following year, is guilty of a misdemeanor; *provided, however,* that steelhead trout may be possessed at any time, when taken with rod and line in tide-water. Every person who buys or sells, or offers or exposes for sale, within this state, any kind of trout less than six inches in length, is guilty of a misdemeanor. [In effect March 26, 1895.]

634. Every person who, between the thirty-first day of August and the first day of November of each year, takes or catches, buys, sells, offers or exposes for sale, or has in his possession any fresh salmon, is guilty of a misdemeanor. Every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon, shad, or striped bass in any of the public waters of this state, at any time between sunrise of each Saturday and sunset of the following Sunday, is guilty of a misdemeanor. Every person who

length, is guilty of a misdemeanor, shall be fined not less than one hundred dollars. All moneys collected for fines for the provisions of this chapter shall be paid into the general fund of the county in which collected. [In effect March 26, 1895.]

635. Every person who places any of the waters of this state any lumber, sawdust, shavings, slabs, refuse, or any substance deleterious to fish, is guilty of a misdemeanor. Every person who carries away any trout or other fish from any pond or reservoir, belonging to any person, without the consent of the owner, is guilty of a misdemeanor. Every person who places any eggs or spawn in any pond, or reservoir has been stocked with fish, is guilty of a misdemeanor. Any person who violates any of the provisions of this chapter shall be fined in a sum not less than

guilty of a misdemeanor. Any net shall be considered a set-net when fastened in any way to a fixed or stationary object. Every person who shall cast, extend, or set any seine or net of any kind, for the catching of fish in any river, stream, or slough of this state, which shall extend more than one-third across the width of said river, stream, or slough, at the time and place of such fishing, is guilty of a misdemeanor. Every person who shall cast, extend, set, use, or continue, or who shall assist in casting, extending, using, or continuing "Chinese shrimp or tag-nets," or nets of similar character, for the catching of fish in the waters of this state, is guilty of a misdemeanor. Every person who shall cast, extend, set, use, or continue, or have in his possession, or who shall assist in casting, extending, using, or continuing "Chinese sturgeon lines," or lines of similar character, is guilty of a misdemeanor. Every person who, by seine or other means, shall catch the young fish of any species, and who shall not return the same to the water immediately and alive, or who shall sell or offer for sale any such fish, fresh or dried, is guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section shall be fined in a sum not less than one hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had not less than one hundred days, or be punished by both such fine and imprisonment. Nothing in this chapter shall prohibit the United States fish commissioners, or the fish commissioners of the state, from taking such fish as they deem necessary for the purpose of artificial hatching at all times. [In effect March 26, 1895]

664. Punishment for attempt to commit crime: 98 Cal. 129.

671. Punishment of attempt to commit crime: 98 Cal. 129.

731. Whenever any portion of the enrolled militia shall have been called out to suppress an insurrection or rebellion, or to enforce the execution of the laws of the United States, the commanding officer, in his own discretion with respect to the manner of proceeding, or bring upon any mob or unlawful assembly, in his honest and reasonable judgment it shall be his duty to afford full protection, civilly or otherwise, to all persons acting in the line of duty. No person called out to sustain the civil authority shall be liable to any pretense, or in compliance with any demand, to render aid upon any mob or unlawful assembly, or of being cashiered by sentence of a court-martial. [March 26, 1895.]

734. It shall not be lawful for any person, other than the regular organization of the militia of this state, and the troops of the United States, to associate themselves together as a militia, or to drill or parade with arms.

violating any of the provisions of this section shall be guilty of a misdemeanor and subject to arrest and punishment therefor. [In effect March 26, 1895.]

758. Proceeding for removal of officer by accusation or information: 97 Cal. 383.

772. Proceeding for removal of officer by accusation or information: 97 Cal. 383; 98 Cal. 588, 589, 590.

783. Venue of offense of crime against nature: 103 Cal. 510.

836. Right of officer to arrest without warrant: 104 Cal. 89

869. Pleading of testimony taken at preliminary examination: 100 Cal. 5.

889. Proceeding for removal of officer for misconduct in office: 97 Cal. 382.

925. *An act to amend section one of "An act authorizing the appointment of an interpreter of the Italian language and dialects in criminal proceedings, in cities and cities and counties of one hundred thousand inhabitants and over," approved March 12, 1885.*

[Approved March 9, 1895.]

SECTION 1. Section one of an act entitled "An act to authorize the appointment of an interpreter of the Italian language and dialects in criminal proceedings, in cities and cities and counties of one hundred thousand inhabitants," approved March twelfth, eighteen hundred and eighty-five, is amended to read as follows:

Section 1. In all cities and cities and counties of over one hundred thousand inhabitants, where an interpreter of the Italian language is necessary, it shall be the duty of the mayor and police judge of such city, or city and county, and of the judge of the superior court of said city and county, or of the county in which said city is situated, or where there are more judges than one, then it shall be the duty of the presiding judge of said superior court and the presiding* judge of the police court and the mayor, to appoint an interpreter of the Italian language, who must be able to interpret the Italian language and dialects into the English language, to be employed in criminal proceedings when necessary in said cities, or cities and counties.

SEC. 2. This act shall take effect immediately.

* Word "presiding" inserted.

of judgment: 100 Cal. 439.

Grounds of demurrer to information: 242.

Contents of indictment or information:

951. Demurrer to indictment or information: judgment: 100 Cal. 439; 102 Cal. 231.

952. Demurrer to indictment or information: of judgment: 100 Cal. 439; 102 Cal. 231.

955. Allegation in pleading of offense: committed: 104 Cal. 612.

959 (Subd. 5). Allegation in pleading of offense: 99 Cal. 329; 103 Cal. 676.

960. Immaterial defects of indictment or information: Cal. 242; 103 Cal. 677.

967. Sufficiency of indictment or information: for larceny or embezzlement of money: 102 Cal. 231.

967. Formalities to be observed in indictment or information: 102 Cal. 231.

988. Indorsement of return on writ of habeas corpus:

Defects fatal to sufficiency of information: 103 Cal. 428, 566.

Waiver of objections to information: 103 Cal. 677.

1017. Form and entry of defendant's plea: 101 Cal. 282.

1023 Plea of former conviction or acquittal—
When "jeopardy" attaches: 99 Cal. 231.

1059. Ground of challenge to panel: 97 Cal. 176.

1064. Ground of challenge to panel of jury: 101 Cal. 283.

1066. Formalities to be observed by criminal courts: 102 Cal. 231.

Defendant must be informed of his right to challenge: 103 Cal. 510, 512.

1073. Actual bias defined: 100 Cal. 229.

1076 Disqualification of jurors: 100 Cal. 229, 230, 231.

1089. Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information for a felony, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or two additional jurors, in its discretion, to be known as "alternate jurors." Such jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges; *provided*, that the prosecution shall be entitled to one, and the defendant to two, peremptory challenges to such alternate jurors.

Such alternate jurors shall be seated near, with equal

tempt. They shall obey the orders of the court upon each trial; but if the regular jurors are in the custody of the sheriff during the trial, such alternate jurors shall also be in the custody of the sheriff, and except, as the court shall order, shall be discharged upon the final verdict to the jury. If, before the final verdict, a juror die, or become ill, so as to be unable to perform his duty, the court may order him to be replaced by the name of an alternate, who shall be placed in the jury-box, and be subject to the same rules and regulations as though he had been selected as a juror. [In effect March 28, 1895.]

1093. Order of evidence—Time for testimony: 103 Cal. 571.

1094. Order of evidence, direct and cross: 103 Cal. 571.

1102. Rules of evidence applied to the trial of a case: 103 Cal. 571.

1110. What necessary to convict of false pretense: 98 Cal. 563; 102 Cal. 564.

1111. Conviction on testimony of accomplice: 98 Cal. 218; 99 Cal. 576.

Charging jury with respect to matters of fact: 98 Cal. 280.

1118. Plea of once in jeopardy: 97 Cal. 401.

1130. Provision for supplying place of district attorney when he cannot conduct prosecution: 98 Cal. 142.

1140. Discharge of jury for failure to agree: 97 Cal. 401; 100 Cal. 142.

1159. Of what offense jury may find defendant guilty, general rule: 99 Cal. 229; 100 Cal. 153, 154, 158.

1180. Once in jeopardy—Effect of granting new trial: 99 Cal. 231, 232.

1181. Grounds authorizing court to grant new trial: 102 Cal. 332.

1182. Amendment of motion for new trial—Application therefor too late: 93 Cal. 355.

1185. Grounds of motion in arrest of judgment: 98 Cal. 128; 103 Cal. 428.

Waiver of objections to information: 103 Cal. 677.

1200. Formalities to be observed by criminal courts: 102 Cal. 231.

1205. Limitations on powers of superior court—Imprisonment for nonpayment of fine: 97 Cal. 528.

1207. What included in a "record of the action" under this section: 103 Cal. 510.

1213. Certified copy of judgment as proper form of warrant for commitment: 103 Cal. 413.

1252. Affirmation of judgment.
appellant to appear: 97 Cal. 248.

1258. Error not affecting substance.
Refusal to permit cross-examination: 100 Cal. 481.

Judgment will not be reversed
in indictment or information: 104 Cal. 486.

1300. Discharge of sureties in
render of principal: 102 Cal. 312.

1305. Protection to sureties in
of satisfactory excuse for neglect of principal:
102 Cal. 312.

1321. Right of defendant to
behalf: 104 Cal. 486.

1323. Defendant not prejudiced
witness: 98 Cal. 238; 99 Cal. 361.

Extent of cross-examination of
witness: 99 Cal. 442; 100 Cal. 475, 481, 483.

Instructions upon subject of
mony—This section does not affect the
483.

1573. Powers of board of prison directors: 103 Cal. 225.

1595. *An act providing for the erection and operation of rock-crushing plants at the state prisons, for the preparation of highway material for the benefit of the people of the state, and providing for the necessary advances and appropriation of money to carry out said work.*

[Approved March 28, 1895.]

SECTION 1. The governor of the state, the state prison directors, and the bureau of highways (or if the latter shall not be established, then and in that case the two first named) shall when satisfied that fifty thousand cubic yards of prepared road or highway metal, as hereinafter described, will be taken for highway purposes, purchase, establish, and operate at one or both of the state prisons, a rock or stone crushing plant, to be operated by convict labor and by the application of power under control of the state prison directors, and with such free labor as is necessary for superintendence and direction, to crush rock or stone into road metal for highway purposes, of different and necessary degrees of fineness, provided that the authority and direction hereby and heretofore conferred and given, shall not be exercised or employed until the governor and the state prison directors are satisfied that transportation can be had for such highway metal for highway purposes at just and reasonable rates, and so as to justify the setting up and operation herein provided for of said plant.

SEC. 2. When such plant described in section one is set up and operated there shall be taken into account in ascertaining the cost of producing highway metal therefrom only the cost of necessary explosives, oil, fuel, tools, and machinery exclusive of the plant itself, repairs, superintendence, and direction, and the preparation and maintenance of beds, boxes, cranes, or other unloading devices for carriage and delivery from cars of said highway metal.

SEC. 3. To said cost of production so ascertained, as set out in section two, there shall be added for and to each and every cubic yard of highway metal so produced, ten per cent, and the result or product of such addition shall be the sale price of such metal delivered from the plant free on board of the cars or other vehicles of transportation.

SEC. 4. Said ten per cent shall, as realized, and not less frequently than semi-annually be paid into the state treasury, until there shall have been paid in the full sum of twenty-five thousand dollars and thereafter said percentage shall be reduced to five per cent, and the same as received, shall be paid into the fund for the support of the state prisons.

SEC. 5. The state prison directors are hereby authorized to lease railroad cars with capacity not to exceed for the rail and economical handling and delivery of highway material prepared as aforesaid, whenever in their judgment the interests of the people of the state will be conserved thereby in the matter of highway construction by the use of such highway metal.

so produced, as in this act provided. The cost of such shall in such case be carried into the cost of production described in section two.

SEC. 6. The sum of thirty thousand dollars is hereby advanced by the state, for the purposes of this act, and is hereby appropriated out of the general fund of the state subject to the demand of the state prison directors; the state controller shall, on presentation of such demand in writing, draw his warrant upon the treasurer for the sum of money in behalf of said state prison directors, and the treasurer shall on presentation of such warrant, pay the Twenty-five thousand dollars of said sum of money advanced and appropriated shall be returned to the fund which drawn, as is specified and directed in this act.

SEC. 7. The sum of five thousand dollars is hereby advanced out of the money so appropriated in the previous act, and for the usage of the state prison directors, to provide and maintain a permanent revolving fund for the purchase of machinery, and other material and appliances, and for the establishment of the plant described in this act, and in the process of crushing and handling rock or gravel at state prisons for the purposes contemplated and provided in this act. All money taken from said revolving fund shall be used exclusively in payment for such supplemental machinery, tools, material, and appliances necessary to the crushing, handling, and preparing of highway material at state prisons, and so much of the money received for sale of highway material as shall be necessary to that end shall be added to said revolving fund as is needed to keep the same constant at the said figure of five thousand dollars.

SEC. 8. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its passage.

1600. Duty of sheriff in relation to prisoners confined in jail: 97 Cal. 242.

1611. Duty of sheriff to receive and provide for persons committed to jail: 102 Cal. 430.

1618. Provision for labor of prisoners on public works and ways: 97 Cal. 243.

1614. Provision for labor of prisoners on public works and ways: 97 Cal. 243.

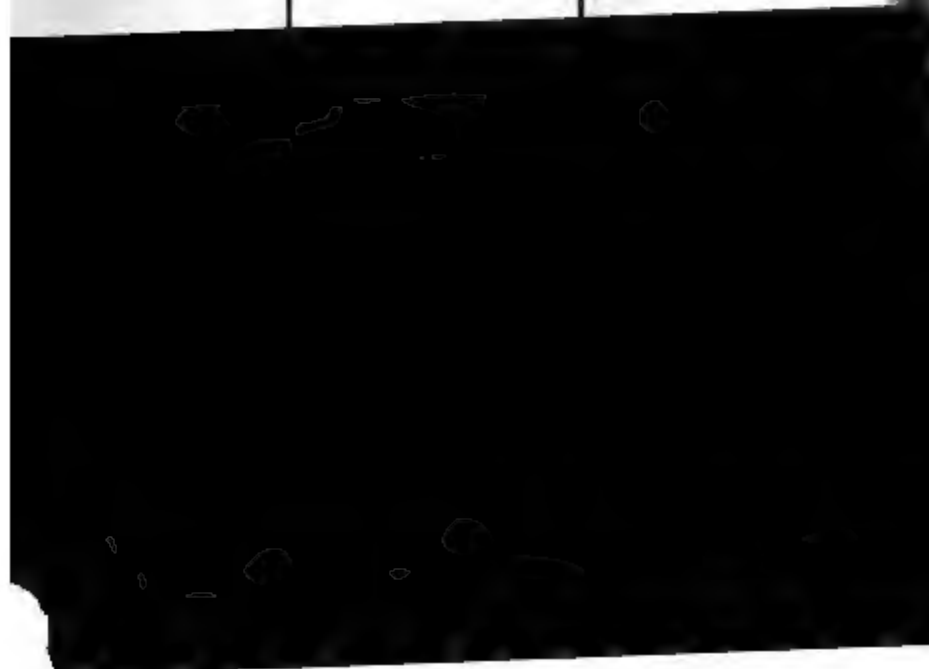


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